S. HRG. 108–163

ALASKA NATIVE ALLOTMENT SUBDIVISION ACT; CAPE FOX ENTITLEMENT ACT; AND THE ALASKA LAND TRANSFER ACCELERATION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

S. 1354

TO RESOLVE CERTAIN CONVEYANCES AND PROVIDE FOR ALTERNATIVE LAND SELECTIONS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT RELATED TO CAPE FOX CORPORATION AND SEALASKA CORPORATION, AND FOR OTHER PURPOSES

S. 1421

TO AUTHORIZE THE SUBDIVISION AND DEDICATION OF RESTRICTED LAND OWNED BY ALASKA NATIVES

S. 1466

TO FACILITATE THE TRANSFER OF LAND IN THE STATE OF ALASKA, AND FOR OTHER PURPOSES

AUGUST 6, 2003

ANCHORAGE, ALASKA

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ALASKA NATIVE ALLOTMENT SUBDIVISION ACT; CAPE FOX ENTITLEMENT ACT; AND THE ALASKA LAND TRANSFER ACCELERATION ACT

WEDNESDAY, AUGUST 6, 2003

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Anchorage, AK.

The subcommittee met, pursuant to notice, at 10 a.m. in Loussac Public Library, Hon. Lisa Murkowski presiding.

OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Good morning. Welcome to the Energy Committee's Subcommittee on Public Lands and Forests field hearing today in Anchorage, Alaska, where the sun shines all the time. Hopefully, we won't have to stay inside for too long on this glorious day, but I want to thank all of you who have come today for this hearing on some very important issues.

I'm Senator Lisa Murkowski. With me at the dais is professional staff from the Energy Committee, from the Subcommittee on Public Lands and Forests, and individuals who have joined us both from Washington, D.C., and from around the State to listen to the legislation that we recently introduced and its impact on the State of Alaska, so welcome to all of you.

Special welcome to Under Secretary Mark Rey who's traveled from Washington. His responsibility includes overseeing the U.S. Forest Service. We also have the director of the Alaska Division of Mining and Land and Water, Mr. Bob Loeffler, welcome. And the State Director for BLM, Mr. Henri Bisson. It's nice to see all of you here today. I'm looking forward to the testimony we will receive.

I would like to begin by thanking both the chairman of the Senate Committee on Energy and Natural Resources, Senator Pete Domenici from New Mexico, and our subcommittee chairman, Senator Larry Craig, from Idaho. Both of these gentlemen will be traveling to Alaska later this week, but were not able to make this schedule as far as this field hearing, but they are good friends to Alaska, and they have provided good leadership and support to the many land and resources issues that face our State.

Before we get started, I would like to comment briefly on the committee process. It might be different than what you normally experience in these assembly chambers. I know the committee proc-

ess in Washington is far different than the committee process that I have experienced in the State legislature.

This hearing today is the first step in what is hopefully an inclusive process to listen and gather information from a variety of perspectives to help ensure that in the end, the Senate passes legislation that makes sense for the country, but more importantly, it makes sense for us in Alaska. I expect that this legislation will change as it moves through the process, as legislation often does.

Now, I would like to say that we would be able to include everyone's testimony who would like to speak out on these issues, but we have limited time, and we have limited the testimony to invited witnesses only. This is basically how it's done in Washington. I'm not saying because we do it Washington this way, that that is the right way to do it, but in the interests of time, and recognizing the gathering of information we're attempting here this morning, we have limited it to invited testimony from the witnesses with time limitations, but I would encourage any of you and those who may be here this morning to submit written testimony within the next 2 weeks. All written testimony will be included in the committee's official hearing record and will be available to the public. So this is not just an exercise. You can get out and put your thoughts down on paper, and it does become part of the public record. The committee will review it and take your thoughts and concerns into consideration.

We will be hearing testimony today on three Senate bills. The first is S. 1466. This is the Alaska Land Transfer Facilitation Act. We have a panel here today to help us understand the provisions of the bill. But I will tell you, it does not require any expert knowledge for me or any other Alaskan to understand the real importance of this legislation. Under the Statehood Act, Alaska was promised 104 million acres of land. To date, we have received final title to only 42 million acres. Additionally, in 1971 the Native corporations were promised 42 million acres of land and have received title to only a third of that land, 15 million acres. The legislation that we will be reviewing today will streamline administrative processes that will expedite transfer of millions of acres of land to the Alaska Natives, the State of Alaska, and the Native corporations, and will bring finality to this decade's long conveyance process by the year 2009, which coincidentally is the 50th anniversary of our statehood.

The Federal Government has management jurisdiction of over 63 percent of the State. It's long past time to transfer these public lands from Federal Government control to State and private ownership. This legislation will accelerate the process to release of lands for conveyance to Native corporations and the State of Alaska. It will also complete land boundaries to allow landowners to more efficiently manage their lands, thus minimizing estate problems.

Further, this legislation will create a hearing and appeals process located in Alaska, which will ensure a more expedited process. Disputes and appeals that are likely to emerge requiring administrative review will be handled by judges located in the State. Alaska cases will no longer have to sit in the queue line with every other agency's appeals within the Department of the Interior.

The second piece of legislation we will be considering today is S. 1354, the Cape Fox Land Entitlements Adjustment Act. This legislation addresses an equity issue for one of Alaska's rural village corporation.

Cape Fox Corporation is an Alaska village corporation organized pursuant to the Native Land Claims Settlement Act by the Native village of Saxon by Ketchikan. As with other Alaska village corporations in the southeast, Cape Fox was given the ability to select 23,040 acres. But unlike other corporations, Cape Fox was the only ANCSA village corporation restricted from selecting the lands within 6 miles of the boundary of the home rule city of Ketchikan. As a result of this 6-mile restriction, only the mountainous northeast corner of Cape Fox core township, which is non-productive and of no economic value, was available for selection by the corporation. Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area and unavailable for ANCSA selection.

Clearly, Cape Fox was on an inequitable economic footing relative to other village corporations in southeast. Despite its best efforts during the years since ANCSA has past, Cape Fox has been unable to overcome the disadvantage the law built into its lands selection by the inequitable treatment. This legislation will address Cape Fox's problem by providing three inter-related remedies. In particular, the legislation will allow Cape Fox and the Secretary of Agriculture to enter into an equal value exchange of lands. This exchange will enhance the economy for southeast and allow for reconsolidation of forest holdings in the inlet area of Romili Island.

Additionally, provisions in the Cape Fox Land Entitlement Act will allow the agency to consolidate its surface and subsurface estate and greatly enhance its management effectiveness of the fishery of the Tongass National Forest.

The final bill we will hear today is S. 1421, the Alaska Native Allotment Subdivision Act. This act is the only answer to resolving the question of whether Native landowners have the authority to subdivide their own property. Individual Alaska Native landowners cannot subdivide their land to transfer it either by gift or by sale. There is no current authority that allows them to dedicate rights-of-way across their land for public access or for utility purposes. The lack of explicit statutory authority calls into question the legal validity of those lands that have been subdivided and lands that could likely be subdivided in the future.

This legislation would provide the necessary authority to the Department of the Interior and Native landowners to dedicate their land for public purposes as they see fit. However, the bill creates no obligation of Alaska Natives to do anything with their allotment unless they elect to sell or dispose of their lands.

By speeding up and simplifying the allotment subdivision process, the Native landowner, the Federal, State, and local governments also benefit. The Native landowner will not be deprived of any of the protections of restricted land status. This legislation will confirm the restrictive Native landowner's right to act in his or her best interest. The issue they face is the choice between being able to subdivide their land, obtain a much greater total compensation for sales of subdivided lots, or continue to be unable to subdivide.

Their only option will be to sell one large tract that will almost always be a substantially total amount of compensation.

I believe this legislation is relatively non-controversial and is beneficial to all affected parties and the general public. The State of Alaska and local government have urged such legislation and the Department of the Interior supports it.

So with that general summary of the legislation that is before us, I would like to turn to our witnesses. The first panel consists of Mr. Rey, Mr. Loeffler, and Mr. Bisson.

Mr. Rey, if you would like to lead us off this morning, it will be greatly appreciated. Welcome.

STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. REY. Thank you, Senator, and thank you for the opportunity to appear before you here today. I'm here to provide the Department of Agriculture's views on S. 1354, a bill, as you described, to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to the Cape Fox Native Corporation and Sealaska Corporation.

As introduced, the bill provides for an additional 99 acres of Alaska Native Claims Settlement Act selection area for Cape Fox and Sealaska Corporation at Clover Passage on Revillagigedo Island. It also requires the Forest Service to offer, and if the offer is accepted by Cape Fox, to complete a land exchange with the Cape Fox and Sealaska Corporations.

Pursuant to the land exchanges provided for in sections 5 and 6 of the bill, Cape Fox Corporation would receive the surface and subsurface of 2,663.9 acres of national forest system land at the Jualin Mine site near Berners Bay, north of Juneau. That is depicted in the light yellow area on the map dated March 18, 2002, which is attached to my testimony and is before you there on the posterboard.

Sealaska Corporation would receive the surface and subsurface national forest system land to equalize values of Sealaska subsurface lands and interests in land it conveys to the U.S. Sealaska Corporation would select national forest system lands of equal value from within a 9,329 acre pool of national forest system lands at the Kensington Mine, also near Berners Bay. This is in the darker yellow area on the map dated April 2002 attached to my testimony and appearing before you.

The Forest Service would receive lands and interests in lands of equal value from within a pool of approximately 2,900 acres, including a public trail easement, offered by Cape Fox and Sealaska on Revillagigedo Island, which is identified on the map dated March 15, 2002 attached to my testimony and appearing before you on the poster board.

The Forest Service would also receive 2,506 acres of Sealaska subsurface estate located at Upper Harris River and Kitkun Bay on Prince of Wales Island; and 3,698 acres Sealaska subsurface land interests remaining to be conveyed to Sealaska pursuant to the Haida Land Exchange Act and the Sealaska/Forest Service Split Estate Exchange Agreement of 1991. Cape Fox would choose the

land to be conveyed to the United States from the 2,900 acre pool in number one above.

The Forest Service has previously worked with you and your predecessor's staff to clarify and improve the language when these changes were under consideration in the 107th Congress. The Department would support the enactment of S. 1354 with the changes outlined in my statement for the record. Those changes go to making sure that the estimate of market value of exchange land, the Uniform Appraisal Standards of Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practices are use, and we also have some suggestions for providing the secretary a little bit more time in making the final determination after Sealaska and Cape Fox have made their decisions.

With these minor changes and a few others outlined in my statement for the record, the Department of Agriculture supports the enactment of S. 1354. We believe there are significant benefits to the government from the enactment, including consolidation of public lands on the southern part of the Tongass National Forest and elimination of split estate ownership.

Thank you for the opportunity to testify. I'd be happy to answer any questions.

[The prepared statement of Mr. Rey follows:]

PREPARED STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today. I am Mark Rey, Under Secretary for the United States Department of Agriculture. I am here today to provide the Department's views on S. 1354, a bill to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes.

S. 1354—CAPE FOX LAND ENTITLEMENT ADJUSTMENT ACT OF 2003

This bill, as introduced, provides for an additional 99 acres of Alaska Native Claims Settlement Act (ANCSA) selection area for Cape Fox and Sealaska Corporations at Clover Passage on Revillagigedo Island. It also requires the Forest Service to offer and, if the offer is accepted by Cape Fox, to complete a land exchanges with the Cape Fox and Sealaska Corporations.

Pursuant to the land exchanges provided for in sections 5 and 6 of the bill:

- Cape Fox Corporation would receive the surface and subsurface of 2,663.9 acres of national forest system (NFS) lands at the Jualin Mine site near Berners Bay, north of Juneau, which is the light yellow area on the map dated March 18, 2002, attached to my testimony.*
- Sealaska Corporation would receive the surface and subsurface of NFS lands to equalize values of Sealaska subsurface lands and interests in land it conveys to the U.S. Sealaska Corporation would select NFS lands of equal value from within a 9,329-acre pool of NFS lands at the Kensington Mine, also near Berners Bay. This is the yellow area on the map dated April 2002, attached to my testimony.
- The Forest Service would receive lands and interests in lands of equal value from within: (1) a pool of approximately 2,900 acres, including a public trail easement, offered by Cape Fox (surface) and Sealaska (subsurface) on Revillagigedo Island, which is identified on the map dated March 15, 2002, attached to my testimony; (2) 2,506 acres of Sealaska subsurface estate, located at Upper Harris River and Kitkun Bay, on Prince of Wales Island; and (3) 2,698 acres of Sealaska subsurface land interests remaining to be conveyed to Sealaska pursuant to the Haida Land Exchange Act and the Sealaska/Forest Service Split Estate Exchange Agreement of 1991. Cape Fox would choose the lands to be conveyed to the United States from the 2,900-acre pool in (1) above.

*Attachments have been retained in subcommittee files.

The Forest Service previously worked with Senator Murkowski's staff to clarify and improve the language when these exchanges were under consideration in the 107th Congress. The Department could support the enactment of S. 1354 with the changes below:

1. We request that Sec. 5(d) be clarified to read ". . . by Cape Fox under subsection (c) are equal in market value to the lands described in subsection (b) based on appraisal reports approved by the Secretary and prepared in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice." Similarly, we request that Sec. 6(b) be clarified to read ". . . selected lands are equal in market value to the lands described in subsection (c), and may adjust amount of selected lands in order to reach agreement with Sealaska regarding equal market value based on appraisal reports approved by the Secretary and prepared in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice."

2. We request that Sec. 7(a) be clarified to read ". . . shall be of equal market value." and ". . . estimates of market value of exchange lands with supporting information in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice."

3. Sec. 5(f) gives the Secretary of Agriculture ninety days after enactment to attempt to consummate an exchange agreement with Cape Fox. During this ninety day period, Cape Fox (pursuant to Sec. 5(c)) has sixty days to identify lands to be conveyed to the U.S., potentially only leaving thirty days for the U.S. to complete an appraisal, obtain title information, and complete the exchange process. Similarly, Sec. 6(d) only gives the Secretary of Agriculture ninety days after receipt of selections by Sealaska to attempt to enter into an exchange agreement with Sealaska. We request these time frames be extended.

4. A normal component of a land exchange includes a provision requiring the exchanged lands to be subject to satisfactory environmental site survey and remediation pursuant to the American Society for Testing and Materials (ASTM) Standard Guide for Environmental Site Assessment E 1903. We request this requirement be added to Sec. 7(b).

CONCLUSION

With these minor changes, the Department of Agriculture supports the enactment of S. 1354. We believe there are significant benefits to the government from enactment, including consolidation of public lands on the southern part of the Tongass and elimination of split estate ownership. Thank you for the opportunity to present the views of the Department of Agriculture. This concludes my testimony. I would be happy to answer any questions that you may have.

Senator MURKOWSKI. Thank you, Mr. Rey. I appreciate your testimony on this legislation. Just for the interest of those listening and observing, what we will do is hear from all three of the panel. They have been reminded that their time is limited to 5 minutes, and at the conclusion of this panel, I will go ahead and ask my questions to all three of you. So with that, we go to Mr. Henri Bisson, State director of Bureau of Land Management.

Mr. Bisson.

STATEMENT OF HENRI BISSON, STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. BISSON. Thank you, Senator. Senator Murkowski, I appreciate the opportunity to appear before you this morning to present the views of the Department of the Interior on S. 1466, S. 1421 and S. 1354.

The Department of the Interior supports the intent of all three of these bills. We would also like to continue to work with the committee to make certain that technical amendments to clarify and strengthen the bills occur, and in the interest of time this morning, I'm going to summarize my written remarks that have been submitted for the record.

Senator, as you know, the Bureau of Land Management in Alaska manages the largest land conveyance program in the United States. One that requires the survey and conveyance of nearly 150 million acres of Alaska's 365 million acre land base.

Consistent with the requirements of applicable Alaska land transfer laws, including the Native Allotment Act of 1906, the Alaska Native Claims Settlement Act and Alaska Statehood Act, the BLM in Alaska has worked diligently for the past 30 years to implement this massive program.

However, the pace of land conveyances has been slow for a variety of reasons. The original framework contained in these statutes and in the implementing regulations provided appropriate direction and guidance for the BLM to begin these land transfer efforts, but the current laws and regulations do not provide the necessary tools for the BLM to complete these transfers efficiently and promptly. The laws themselves have been amended, superseded, and re-interpreted by judicial review many, many times, and each time this has occurred, the BLM has been required to re-assess, review, resort title claims to make certain that our actions with respect to all land claims and interests are appropriate, consistent with the interpretation of the applicable laws, and legally defensible.

The BLM is responsible for adjudicating land claims, conducting and finalizing Cadastral land surveys, and transferring legal land title. This land transfer work in Alaska is complicated both operationally, due to remote locations, and administratively, because of complex case law and processes for transferring lands from Federal ownership to other ownerships.

Last fall, Secretary Norton, and BLM director Kathleen Clark, along with other Department of the Interior and Bureau officials, met with representatives of several Alaska Native corporations, and during those meetings, urgent concerns were expressed about the pace of legislatively-mandated land transfers. We have also heard from both Senator Stevens and yourself about concerns about the pace that this has taken place.

We recognize these long-standing concerns and share an interest in completing the land transfers in an expeditious manner. The completion of all Alaska land entitlements and the establishment of land ownership boundaries are absolutely essential to the proper management of lands and resources in Alaska. We have extensively analyzed the land transfer program to try to streamline processes and expedite conveyances. And, furthermore, in responding to a congressional directive this year, and in an effort to further expedite the conveyances, we have met with the staff from the Alaska congressional delegation, with Native entities, with environmental groups, with industry, and the State and other Federal agencies to discuss innovative ideas to get feedback on the land transfer process.

This bill was introduced as a legislative solution to begin to resolve many of these issues. In our opinion, S. 1466 will eliminate many of the delays that currently exist in the adjudication and conveyance of Native allotments, State and ANCSA entitlements. It also provides flexibility that we need in negotiating final entitlements.

Senator Murkowski, the Department of the Interior supports the intent of the bill, and we look forward to continuing work with you and your staff on it. S. 1421 would authorize Native—Alaska Native owners of restricted allotments, subject to the approval of the Secretary of the Interior, to subdivide their land in accordance with State and local laws governing subdivision plats, and to execute certificates of ownership and dedication with respect to these lands, and would confirm the validity of past Secretary-approved dedications upon which many concerned parties have relied.

We also support enactment of that legislation, and we have provided a recommended modification in my written testimony to that bill. S. 1354 extends benefits to Cape Fox that were not available under the original terms of ANCSA. The Department has carefully considered the merits of this proposal and agrees the Cape Fox situation is sufficiently unique to warrant a legislative remedy that is provided in S. 1354. We are concerned about the conveyance deadline in the bill, and we have recommended a modification to it that is described in my written testimony.

In closing, I would like to reiterate that the Department of the Interior supports the intent of all three bills addressed at today's hearing. We look forward to working with the committee on these bills, and I'd be happy to answer any questions you many have.

[The prepared statement of Mr. Bisson follows:]

PREPARED STATEMENT OF HENRI BISSON, STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Senator Murkowski, I appreciate the opportunity to appear before you today to present the views of the Department of the Interior on S. 1466, the Alaska Land Transfer Acceleration Act of 2003; S. 1421, the Alaska Native Allotment Subdivision Act; and S. 1354, the Cape Fox Land Entitlement Act of 2003. The Department of the Interior supports the intent all three of these bills. We would like to work with Committee to make certain technical amendments designed to clarify and strengthen the bills.

S. 1466, ALASKA LAND TRANSFER ACCELERATION ACT OF 2003

Background

The Bureau of Land Management (BLM) is the Department of the Interior's designated land survey and title transfer agent. The BLM in Alaska manages the largest land conveyance program in the United States—one that requires the survey and conveyance of nearly 150 million acres of Alaska's 365 million-acre land base.

Consistent with the requirements of applicable Alaska land transfer laws, including the Native Allotment Act of 1906, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska Statehood Act, for the past 30 years, the BLM in Alaska has worked diligently to implement this massive program. However, the pace of land conveyances has been slow for a variety of reasons. The original framework contained in these statutes and in the implementing regulations provided appropriate direction and guidance for the BLM to begin these large land transfer efforts, but current laws and regulations do not provide the necessary tools for the BLM to complete the transfers efficiently and promptly. The laws themselves have been amended, superceded, and re-interpreted by judicial review many times. Each time this has occurred, the BLM has been required to reassess, review, and re-sort land title claims to make certain that the BLM's actions with respect to all land claims and interests are appropriate, consistent with the interpretation of the applicable laws, and legally defensible.

Last fall, Secretary Norton, Bureau of Land Management (BLM) Director Clarke, along with other Departmental and Bureau officials, met with representatives of several Alaska Native corporations. During those meetings, Alaska Natives expressed urgent concerns about the pace of the legislatively-mandated land transfers. The Alaska congressional delegation and officials of the State of Alaska have raised similar concerns and have expressed an interest in accelerating the land conveyances so they are completed by 2009.

The Department of the Interior recognizes these long-standing concerns and shares an interest in completing the land transfers in an expeditious manner. The completion of all Alaska land entitlements and the establishment of land ownership boundaries are essential to the proper management of lands and resources in Alaska.

"Allotments" Background—Native Allotment Act of 1906/Alaska Native Veterans Allotment Act of 1998

In order to fully understand the status of Alaska land transfers, it is necessary to understand the interconnected nature of the underlying transfer legislation, the complexity and range of issues involved in the BLM's Alaska land conveyance program, and related terminology.

Land "allotments" are land conveyances from the Federal Government to qualified individual applicants as authorized by law. The Native Allotment Act of 1906 authorized individual Indians, Aleuts, and Eskimos in Alaska to acquire an allotment consisting of one or more parcels of land not to exceed a total of 160 acres. Alaska Natives filed approximately 10,000 allotment applications for almost 16,000 parcels of land statewide under this Act before its repeal in 1971.

The Alaska Native Veterans Allotment Act of 1998 (Veterans Allotment Act) provided certain Alaska Native Vietnam-era veterans, who missed applying for an allotment due to military service, the opportunity to apply under the terms of the 1906 Native Allotment Act as it existed before its repeal. There were 743 applications filed for approximately 992 parcels under the Veterans Allotment Act, before the application deadline closed on January 31, 2002.

The BLM's total allotment workload remaining to be processed consists of 3,256 parcels—including 2,491 parcels filed under the 1906 Act and 765 parcels filed under the 1998 Act. Each of these individual remaining parcels must be separately adjudicated based on its unique facts and, if valid, surveyed and conveyed. Furthermore, of these remaining 3,256 parcels, approximately 1,100 parcels are on lands no longer owned by the United States. On these 1,100 parcels, the BLM is required by law to investigate and attempt to recover title to each parcel in order to convey the lands to the individual Native applicant.

"Entitlements" Background—Pre-Statehood Grants/Alaska Statehood Act of 1958

Land acreage "entitlements" are specified amounts of land that are designated by law for conveyance to the State of Alaska or to qualified Native entities. In order to receive its land acreage entitlement, a qualified entity or the State must file land "selection" applications that identify the specific lands to be conveyed to meet the authorized entitlement.

Pre-Statehood grants and the Alaska Statehood Act of 1958 entitle the State of Alaska to 104.5 million acres. Of this total acreage to be conveyed, the BLM has taken final adjudicative action on, surveyed, and patented over 41 million acres. Final adjudication and title transfer have taken place on an additional 48 million acres, but final survey and patent work remains to be completed on this acreage. The remaining 15.5 million acres to be conveyed have not been prioritized for conveyance by the State, and thus conveyance work on this acreage has not yet begun. Over 4,400 applications must still be addressed and approximately 3,000 townships (an area roughly the size of the State of Colorado) must be surveyed before the State's entitlements can be completed by issuance of final patents.

"Entitlements" Background—Alaska Native Claims Settlement Act of 1971 (ANCSA)

The Alaska Native Claims Settlement Act of 1971 (ANCSA) and its amendments were enacted to settle aboriginal land claims in Alaska. ANCSA established 12 regional corporations and over 200 village corporations to receive approximately 45.6 million acres of land. This is the largest aboriginal land claim settlement in the history of the United States. Of these 45.6 million acres to be conveyed under ANCSA, the BLM has issued final patents on over 18 million acres. Final adjudication and title transfer have taken place on an additional 19 million acres, but final survey and patent work remains to be completed on this acreage. The BLM is unable to adjudicate, survey and convey the remaining 8.6 million acres because many Native corporations have significantly more acres selected than remain in their entitlements, and the corporations must identify which selections will be used to meet their remaining entitlements.

Impediments to Completing Conveyances (Allotments & Entitlements)

The BLM is responsible for adjudicating land claims, conducting and finalizing Cadastral land surveys, and transferring legal land title. The land transfer work is complicated, both operationally, due to remote locations and extreme weather condi-

tions, and administratively, due to complex case law and processes for transferring lands from Federal ownership to other ownerships.

The vast majority of the 3,256 remaining Native allotment claims must be finalized before the ANCSA corporations and the State can receive their full entitlements authorized under law. This is primarily because most lands claimed as allotments are also selected by at least one ANCSA corporation and may also be selected (or "top-filed") by the State of Alaska. In order to determine whether these lands are available for conveyance as part of the State's or an ANCSA corporation's entitlement, and to avoid creating isolated tracts of Federal land, there must first be final resolution of the allotment claims.

The adjudication of the 3,256 Native allotments is arduous and time-consuming for a variety of reasons, including evolving case law and complex land status. In addition, statutory deadlines imposed in subsequently enacted legislation also can have the effect of delaying work on existing priorities and previously-made land transfer commitments. The filing of reconstructed applications, requests for reinstatement of closed cases, the reopening of closed cases, changes in land description, and the recovery of title also cause lengthy delays in completion of the Native allotment program. Finally, delays in the scheduling of due process hearings, the need to await the outcome of prolonged administrative appeal procedures, and litigation in the Federal court system can add years to the process. All of these issues unduly complicate completion of the remaining 3,256 Native allotments claims.

The processing of ANCSA entitlements also can be delayed for reasons other than Native allotment applications. Alaska Native Corporations are State-chartered corporations. They are valid legal entities only when they comply with the laws of the State of Alaska. Some Native corporations have been dissolved for failure to comply with State law. New conveyances cannot be made to a corporation if it ceases to exist and is dissolved. Additionally, while many Native corporations have applied for significant amounts of land in excess of their official entitlement acreage, there are also instances where village corporations have not made adequate selections to meet their entitlements. Section 1410 of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 provides a means by which additional lands can be made available to solve the under-selection problem, but the Section 1410 withdrawal and selection process can be cumbersome and time-consuming.

Completion of State entitlements is complicated by ANCSA over-selections and Federal mining claims. Unrestricted over-selections by ANCSA corporations mean that the State will have to wait for ANCSA corporations to receive final entitlement acreage before the State knows what lands will be available for conveyance to it. Lands encumbered by properly filed and maintained Federal mining claims also complicate the process and are not available for final conveyance to the State. The surrounding land can be transferred to the State, but excluded mining claims then constitute individual, isolated enclaves of Federal lands which are difficult to manage and, under current law, must be segregated by costly exclusion surveys before issuance of a patent to the State.

Expediting the Alaska Land Transfer Program

Over the years, the BLM has extensively analyzed the land transfer program in order to streamline processes and expedite conveyances. In 1999, the BLM, working in partnership with its customers and stakeholders (including Native entities and the State of Alaska), developed a strategic plan that would result in completion of the remaining land transfer work by 2020. The BLM is implementing this strategic plan, and, under current law, the Bureau anticipates completion of the land conveyances by 2020.

Congress, through the Conference Report on the Department of the Interior's FY 2003 appropriation (House Report 108-10, February 12, 2003), directed the BLM to develop a plan to complete the Alaska land transfer program by 2009. In order to comply with this direction, BLM officials have met with staff from the Alaska Congressional delegation, Native entities, environmental groups, industry, the State, and other bureaus and offices within the Department, as well as the Forest Service, to discuss innovative ideas and to get feedback on the land transfer process. S. 1466 was introduced as a legislative solution on July 25, 2003, to eliminate the unintended delays in the conveyance process.

In BLM's opinion, S. 1466 will eliminate many of the delays that currently exist in the adjudication and conveyance of Native allotments, State and ANCSA entitlements. It also provides flexibility in negotiating final entitlements. The following summarizes some of the major provisions of the bill.

Title I—State Conveyances

S. 1466 enables the BLM to accelerate conveyances to the State of Alaska, reduces costs associated with processing State conveyances, and simplifies the BLM's land management responsibilities by addressing statutory and regulatory minimum acreage requirements. The bill allows the State to obtain title to improved properties of significant value to local communities in which the United States retained a reversionary interest. It also allows the State to receive title to areas that are currently withdrawn from State selection due to their identification of having hydroelectric potential, while still maintaining the Federal Government's right of re-entry under the Federal Power Act.

The bill also facilitates completion of the University of Alaska's 456-acre remaining entitlement under current law (the Act of January 21, 1929) by increasing the pool of land from which the University can make its final selections. The 1929 Act limited University selections to lands already surveyed. S. 1466 allows the University to use its remaining entitlement to select the reversionary interests in lands it owns and, with the consent of the current landowner, the reversionary interest in lands owned by others under the Recreation and Public Purposes Act (R&PP).

When lands were conveyed to various entities under the R&PP Act, the Federal government retained minerals as well a reversionary interest in the property. These lands were applied for under the R&PP Act because of their suitability for development purposes or community use. The BLM must continually monitor these small properties to assure that the owners are in compliance with the original terms of the conveyance. If there is a violation of the original use, the BLM must take the necessary steps to assert that an event triggering reversion has occurred and then plan for the subsequent use or disposition of the property when it comes back into Federal ownership. As these lands have already been surveyed, one logical use for the reverted property would be to fulfill the University's 1929 entitlement. By allowing the University to select reversionary interests, the BLM is freed from current monitoring costs and responsibilities. Under this proposal, the University will be required to expend one acre of remaining entitlement for each acre of reversionary interest received. Another option extended to the University under this bill is the ability to select unsurveyed, public domain lands with the concurrence of the Secretary. These changes will substantially increase the pool of lands from which the University has to choose, are consistent with the intent of the 1929 Act to provide lands which are capable of generating revenues, and are expected to lead to final resolution of this seven-decade old entitlement.

Title II—ANCSA Provisions

S. 1466 expedites the land transfer process to ANCSA corporations by giving the BLM the tools to complete ANCSA entitlements. Currently, when an Alaska Native corporation's existence has been terminated under State law, all BLM land transactions with the corporation are suspended. Title II provides a mechanism for BLM to transfer lands by giving terminated corporations two years from the date of enactment to become reestablished. If this does not occur, then the bill directs the BLM to transfer the remaining entitlement to the appropriate Regional Corporation. The bill also establishes deadlines by which Regional corporations must complete assignments of acreages to villages (so-called "12(b) lands"). The legislation also allows village entitlements established by ANCSA (so-called "12(a) lands") and acreage assigned by Regional Corporations to villages to be combined, which will expedite adjudication, survey, and patent of all village lands. In addition, the bill permits the BLM to "round up" final entitlements to encompass the last whole sections. Thus, under the bill, it will no longer be necessary for BLM to survey down to the last acre, which often requires more than one field survey season to accomplish.

The bill also accelerates the completion of ANCSA conveyances by amending ANCSA (section 14(h)) to allow for the completion of the conveyance of certain cemetery and historical sites, as well as other critical conveyances. Under ANCSA, regional corporations will not know their final acreage entitlements until the BLM has completed the adjudication and survey of nearly 1,800 individual cemetery and historical sites. S. 1466 provides options for the rapid settlement of these regional entitlements, an issue of critical importance to Regional corporations. In establishing an expedited process, we would like to work with the Committee on amending Section 14(h) to ensure that the bill addresses concerns of Alaska Natives regarding potential location errors, waiver of regulations, and related matters.

Title III—Native Allotments

Finalizing Native allotment applications is essential to the completion of the entire land transfer program. Numerous requests for reinstatement of closed Native allotment applications; allegations of lost applications; and amendments of existing

applications to change land descriptions have profound impacts on all land conveyances, not just the ongoing adjudication of an individual Native allotment application.

S. 1466 finalizes the list of pending Native allotments and the location of those allotments. It does so by establishing a final deadline after which no applications will be reinstated or reconstructed and no closed applications will be reopened. It also prohibits applicants and heirs from initiating any further amendments, thus fixing the location of the claim. Without some means of finalizing the list of allotment applications and locations, it will be extremely difficult for the BLM to complete the land transfers, the State and ANCSA landowners will have no certainty that their title is secure, and selection patterns surrounding allotment applications will be difficult to finalize and patent.

The bill also addresses instances where allotment claims are for lands no longer in Federal ownership. S. 1466 expedites recovery of title from both the State and ANCSA corporations by streamlining the current procedures. It permits ANCSA corporations to negotiate with the allotment applicant in order to provide substitute lands to the claimant for lands the corporation would prefer not to reconvey. The State has had this authority for over 10 years (P.L. 102-415, Oct. 14, 1992). Under the bill, a deed also can be tendered to the United States for reconveyance to an applicant, without requiring the BLM to do additional field examinations to meet Department of Justice rules for land acquisition.

Title IV—Deadlines

In order to complete the land transfers by 2009, the bill establishes sequential deadlines for the prioritizing of selections. The bill staggers the deadlines and allows six months between them for Native Village Corporations, Native Regional Corporations, and, the State of Alaska, in that order. These six-month periods allow the entities that are next in line to know the final boundaries of the preceding entity.

Title V—Hearings & Appeals

S. 1466 directs the Secretary to establish a hearings and appeals process to issue final Department of the Interior decisions for all disputed land transfer decisions issued in the State, and authorizes the hiring of new staff to facilitate this work. While the Department is already acting to expedite decisions on all business before the Office of Hearings and Appeals, and in particular to quickly address older cases, a process dedicated to resolving Alaska land transfer disputes will facilitate the conduct of hearings and the issuance of decisions.

Title VI—Report to Congress

Finally, S. 1466 requires the BLM to report to Congress on the status of conveyances and recommendations for completing the conveyances.

S.1421, ALASKA NATIVE ALLOTMENT SUBDIVISION ACT

Background

The purpose of the Federal statutory restrictions placed on Alaska Native allotments and restricted Native townsite lots is to protect Alaska Native owners against loss of their lands by taxation, and to provide oversight of any alienation of such lands for the owners' protection. Generally, these lands are administered according to Federal law, particularly as it may relate to the issuance of rights-of-way, easements for utilities, and other public purposes. An unintended consequence of these protections is that when an owner of restricted land attempts to subdivide and sell his property or dedicate certain portions for easements and other public purposes, all in compliance with state or local subdivision platting requirements, it is not clear whether those dedications constitute valid acts under Federal law. This uncertainty has worked to the disadvantage of owners of restricted land who wish to subdivide and develop their property.

The economic advantages of subdivision in compliance with State and local law have led a number of Alaska Native allotment owners over the past two decades to survey their property for subdivision plats, and to submit the surveys to local authorities for approval. These plats typically contained Certificates of Ownership and Dedication, whereby the land owners purported to dedicate to the public land for roads, utility easements, or other public uses. Platting authorities, the public, individual subdivision lot buyers, and the restricted land owners relied on these dedications and the presumption that they were binding and enforceable.

However, in late 2000, the Department of the Interior's Office of the Solicitor recognized that this presumption was not clearly established in law. In response, the Bureau of Indian Affairs and realty service providers authorized under the Indian Self-Determination Act sought to overcome the doubts raised about the validity of

past dedications. Their solution relied on the Secretary of the Interior's authority under Federal law to grant rights-of-way and easements identical to those interests dedicated on the face of existing subdivision plats.

This approach, however, has proven to be unsatisfactory. It creates substantial extra work for government and realty service providers. More importantly, the State of Alaska and some affected Boroughs are unwilling to apply for or accept title to such rights-of-way on behalf of the public. These units of government understandably prefer that public rights be established by dedication, rather than direct title transfers, which might saddle the local government with maintenance or tort liability. Without the participation of platting authorities and governments, it is difficult to resolve uncertainties as to the validity of dedications on previously filed and approved subdivision plats. Moreover, it is impossible for Native owners of restricted lands who, in the future, may wish to subdivide their land in accordance with State or local platting requirements, to do so without first terminating the restricted status of their lands.

S. 1421 would authorize Alaska Native owners of restricted allotments, subject to the approval of the Secretary of the Interior, to subdivide their land in accordance with State and local laws governing subdivision plats, and to execute certificates of ownership and dedication with respect to these lands. The bill also would confirm the validity of past dedications that were approved by the Secretary. Ratifying past dedications will benefit all concerned parties, including the buyers and sellers of lots in affected subdivisions, the State and local governments, the Bureau of Indian Affairs, realty service providers under the Indian Self-Determination Act, and the general public. All of these entities have in the past relied upon the legal validity of dedications to the public which appeared on the face of existing plats.

Enactment of S. 1421 would remove an obstacle to pending lot sales and re-sales in existing subdivisions. It would pave the way for other Native owners of restricted lands to create new subdivisions in compliance with State or local platting requirements without forcing them to choose between the financial benefits of compliance with State law and the retention of protections against taxation and creditor's claims inherent in the restricted status of their lands. This feature is clarified by Section 5(b) of S. 1421, which provides that Federal restrictions against taxation and alienation are only lost by compliance with State or local platting requirements as to those specific interests expressly dedicated in the Certificate of Ownership and Dedication.

The Department recommends amending Section 4(a)(1) of the bill to read, "subdivide the restricted land for rights-of-way for public access, easements for utility installation, use and maintenance and for other public purposes, in accordance with the laws of the—" to make this section consistent with the findings in Section 2(a)(b)(c) of the bill. Additionally, the Department recommends adding a new section to the bill authorizing the promulgation of regulations to clarify how S. 1421 would be implemented.

S. 1354, CAPE FOX LAND ENTITLEMENT ACT OF 2003

Background

Cape Fox Corporation (Cape Fox) is an Alaska Native Village Corporation organized pursuant to ANCSA for the Native Village of Saxman, which is located near Ketchikan. Like the other nine southeast villages recognized for benefits under section 16 of ANCSA, Cape Fox received an entitlement of 23,040 acres. All other ANCSA Village Corporations were restricted from making selections within two miles of the boundary of home rule cities. Cape Fox, however, was uniquely affected by the original terms of ANCSA as it was restricted from making selections within six miles of the boundary of the city of Ketchikan. As a result of the six-mile restriction, the only land within Cape Fox's core township available for conveyance is a 160-acre parcel which the corporation does not want. Under current law, the BLM must transfer this parcel to Cape Fox and charge the acreage to the corporation's ANCSA entitlement.

The requirement for village corporations to take title to all available land within their core township is a basic component of ANCSA, applicable to all village corporations. Another basic component of the original settlement is that conveyances to village corporations will be restricted to lands withdrawn for that purpose under the original terms of ANCSA.

S. 1354 waives an existing statutory requirement that would compel Cape Fox to use a portion of its entitlement under ANCSA for a remote 160-acre mountainous parcel that is of no economic value to the corporation. The bill also directs the BLM to convey to Cape Fox, the surface estate to a 99-acre tract in the Tongass National

Forest that was unavailable to the corporation under the original terms of ANCSA; the subsurface estate of this tract is to be transferred to Sealaska Corporation.

Because S. 1354 extends benefits to Cape Fox that were not available under the original terms of ANCSA, the Department has carefully considered the merits of this proposal and agrees that the Cape Fox situation is sufficiently unique to warrant the legislative remedy that is provided in S. 1354. However, the Department is concerned about the conveyance deadline in Sec. 4(c) of the bill. If Cape Fox decides to accept title to the lands offered, the BLM must issue conveyance documents within six months of receiving the corporation's selection. Current regulatory requirements for ANCSA conveyances take longer than the six months—typically closer to 12 months—and must include identification of easements to be reserved, issuance of an appealable decision, and public notice of that decision. Unless the legislation specifies otherwise, or the ANCSA conveyance process is changed before then, the 99-acre tract must be conveyed under existing ANCSA regulations. The six month timeframe also could be unnecessarily disruptive to BLM conveyance transactions that are in progress.

The Department of the Interior recommends that Sec. 4(c) of the bill be modified to read as follows: *"TIMING—The Secretary of the Interior shall complete the interim conveyances to Cape Fox and Sealaska under this section as soon as practicable after the Secretary of the Interior receives notice of the Cape Fox selection under subsection (a)."* The Department understands the economic importance of this conveyance to Cape Fox and will transfer title as quickly as possible in concert with other existing land transfer plans and commitments.

Adjustment of Cape Fox's selections and conveyances of land under ANCSA requires adjustment of Sealaska Corporation's (Sealaska) selections and conveyances to avoid the creation of an additional split estate between National Forest System surface lands and Sealaska subsurface lands. Since this adjustment concerns lands administered by the U.S. Department of Agriculture, the Department of the Interior defers to the Secretary of Agriculture on a position on this aspect of S. 1354.

CONCLUSION

In closing, I would like to reiterate the Department's support for the intent of all three of the bills addressed at today's hearing. If enacted, S. 1466 will go a long way in expediting land transfers and promoting the proper management of all lands and resources in Alaska; S. 1421 will allow Native Alaskans to subdivide their restricted allotment lands with the approval of the Secretary; and S. 1354 addresses circumstances that are unique to Cape Fox and Sealaska. We look forward to working with the Committee on these bills. I will be happy to answer any questions you may have.

Senator MURKOWSKI. Thank you, Mr. Bisson, and the next person on the first panel is Mr. Bob Loeffler, director of the Division of Mining, Land and Water.

Mr. Loeffler.

STATEMENT OF BOB LOEFFLER, DIRECTOR, DIVISION OF MINING, LAND AND WATER, ALASKA DEPARTMENT OF NATURAL RESOURCES

Mr. LOEFFLER. Good morning, Senator Murkowski. On behalf of the State of Alaska, I would like to thank you and the subcommittee for holding this hearing in Anchorage.

My name is Bob Loeffler. I'm the director of Division of Mining, Land, and Water within the Department of Natural Resources within the State of Alaska. The Alaska Department of Natural Resources manages the land owned by the State of Alaska. On behalf of the State, I offer the following comments in support of all three bills before the subcommittee here today.

I would like to begin with S. 1466, Alaska Land Transfer Act. With appropriate funding, it will speed up land transfers to individual Native allottees, Native corporations, and the State of Alaska, and in this case, provided a tremendous opportunity for Alaska and Alaskans.

I would like to take this opportunity to describe the problem this bill solves and why it is important for Alaskans. During the statehood debate almost 40 years ago, Alaska was given a large land entitlement, because it was through the ownership and development of those lands that the new State would gain the revenue needed to sustain itself as a State. This far-sighted prediction has in fact proven right.

In Alaska, unlike many other States, it is the State and Native land that provides most of the development and revenues for administration of the State and for the jobs and income for Alaskans. Unfortunately, another statehood era prediction has also become true. During the statehood debate, then Senator Robertson of Virginia called these lands the promised land of Alaska. And, 44 years later, the land base remains, in part, a promise.

Let me explain. As you summarized earlier, we have yet to receive our full entitlement. The land grant to the State of Alaska provided for the eventual transfer of 105 million acres to the State. To date, we received tentative approval of 90 million acres, about 45 of which have been surveyed and patented. These lands have provided Alaska with land for the largest State park system in the Nation, provided us with rich oil fields of the North Slope, which have produced billions of dollars to the State treasury and individual Alaskans through the permanent fund, and have enabled the State to transfer hundreds of thousands of acres into private ownership through State land sale programs and through municipal entitlements. The remaining 15 million acres to be transferred will add additional base for the State's wealth and prosperity, and survey of the remaining 60 million acres will better allow the State to use and develop its resources.

However, this bill benefits not just the State, but others. Alaskans, including individual Native allottees, Native corporations and citizens have waited too long for these land transfers to be completed. The deadline for filing Native allotments ended 32 years ago. Yet thousands of allottees still wait their approval. Similarly, 32 years after the passage of the Native Claim Settlement Act, the Native corporation still await transfer of almost a quarter of their entitlement.

The remaining entitlement for all this and the lack of conveyance puts a significant impediment to the use and development of these lands. Clearly, allottees cannot use land they don't own. In addition, the entitlement remaining for the State and Native corporations has an important chilling effect on the development of some areas of the State. Secure land title is a fundamental prerequisite for development, and confusion about the eventual owner puts any significant exploration or investment on hold until ownership is established.

Resolving these entitlements will make lands available for individual Alaskans for their use and enjoyment, and to the corporations and the State to encourage the use and development of Alaska's lands. This promise, our promised land, if you will, is a promise that unfortunately we believe the present system cannot keep. This legislation has the goal of completing these transfers by the 50th anniversary of the State, but those who have worked in State government who watched this conveyance process know the current

system will never resolve the remaining entitlements, or at least not within our lifetime or the lifetime of our children.

I say this not to disparage the good work of BLM employees, or by Department of the Interior. Rather, interactions of complicated entitlements of allottees, ANCSA corporations and the State, with the lingering, outdated public land orders, combined with insufficient funding do not allow BLM and the State to take a comprehensive look at any area. And as a result, this has resulted in a system where we cannot untangle with complex web in any timely or reasonable fashion.

Let me explain, because I believe this to be an important point. Native corporations cannot finalized their conveyance priorities until they know what they are able to receive; that is, until the region's Native allotment program is finished. The State's entitlement cannot be fulfilled until ANCSA entitlements are finished. All these are complicated by lingering and outdated public land orders. The current system and funding level does not allow BLM to comprehensively address the problems in any one area. This complexity requires different thinking, different ways of doing business, and additional funding to finish the entitlements.

There is one additional provision that I would like to call your attention. Section 209 provides the Secretary of the Interior specific authority to modify the land orders. The State supports this provision. Most of the withdrawals would be affected by this provision were established in the 1970's, so the Federal land could be studied for various conservation and public purposes. When Congress enacted ANILCA in 1980, it resolved the issue what Federal lands would be retained for these purposes. Yet nearly a quarter of a century later, most of the withdrawals remain and hinder the use and transfer of much of BLM land in Alaska. We believe that the way the bill propose to lift these would provide assurances the conveyances will be lifted with appropriate environmental safeguards.

One key element of this legislation not before the committee today is the funding to accomplish this accelerated land program. Without increased funding, including funding to BLM and State ANCSA corporations, the program will fall short of this objectives of this bill. I do note, however, providing the funding needed for a concentrated program is less than will be received without this bill and without a concentrated effort to finalize conveyances by 2009. It takes significantly less funding to concentrate and finish the conveyances with this deadline with this bill than it does to string along the conveyances for decades.

So with that, we wholeheartedly support this bill. And I would like to take the opportunity to quickly reference the other two bills under consideration.

Senator MURKOWSKI. Mr. Loeffler, you have exceeded your 5 minutes. I don't want to short change the——

Mr. LOEFFLER. I believe my testimony is in the record. I would just note that we do support the other two bills. I'm happy to answer any questions you may have.

[The prepared statement of Mr. Loeffler follows:]

PREPARED STATEMENT OF BOB LOEFFLER, DIRECTOR, DIVISION OF MINING, LAND AND WATER, ALASKA DEPARTMENT OF NATURAL RESOURCES

Good morning, Senator Murkowski. On behalf of the State of Alaska, I thank you and the Subcommittee for holding this hearing in Anchorage. My name is Bob Loeffler. I am the Director of the Division of Mining, Land and Water within the Alaska Department of Natural Resources. The Alaska Department of Natural Resources manages the land owned by the State of Alaska.

On behalf of the State of Alaska, I offer the following comments in support of all three bills before the Subcommittee this morning: S. 1421, the Alaska Native Allotment Subdivision Act; S. 1354, the Cape Fox Land Entitlement Act; and S. 1466, the Alaska Land Transfer Acceleration Act.

S. 1466, THE ALASKA LAND TRANSFER ACCELERATION ACT

I would like to begin with S. 1466, the Alaska Land Transfer Acceleration Act. With appropriate funding, it will speed up land transfers to individual Alaska Native Allottees, to Alaska Native Corporations, and to the State of Alaska, and in this way provide a tremendous opportunity for Alaska. I would like to take this opportunity to describe the problem this bill helps solve, and why it is important to Alaska.

The Promised Land

During debate about Alaska's statehood, Alaska was given a large land entitlement, because it was through the ownership and development of those lands that the new state would gain the revenues needed to sustain itself as a state. That farsighted prediction was proved right. In Alaska, unlike many other states, it is the state and Native land that provides the development and revenues for administration of Alaska, and for the jobs and income for Alaskans.

Unfortunately, another statehood-era prediction has also come true. During the statehood debate, then-Senator Robertson of Virginia called these lands the "promised land." And, 44 years later, the land base remains, in part, a promise. Let me explain.

A Promise Yet to Keep

The land granted to the state through the Statehood Act and other federal laws will result in the eventual transfer of over 105 million acres to the state. To date, 90 million acres have been transferred, about 45 million acres surveyed and patented. These lands have provided Alaskans with land for the largest state park system in the Nation, provide us with the rich oil fields of the North Slope that have brought billions of dollars into the state treasury and individual Alaskans through the Permanent Fund, and have enabled the state to transfer hundreds of thousands of acres into private ownership through state land sale programs. The remaining 15 million acres to be transferred will further add to the state's wealth and prosperity, and survey of the 60 million acres will better allow the state to use and develop its land and resources.

Alaskans including individual Native allottees, Native Corporations and the citizens of the State have waited too long for these land transfers to be completed. For example, the deadline for filing most Native Allotments was 32 years ago, in 1971, yet thousands of allottees still are waiting for final approval of their Allotments. Similarly, 32 years after the passage of the Alaska Native Claims Settlement Act, Native Corporations still await transfer of almost 10 million acres, and survey and patent to many million more acres. Finally, the state was promised over 105 million acres at Statehood in 1959, yet we still await the transfer of 15 million acres and the survey and patent of nearly 60 million acres.

This remaining entitlement to all of these groups puts a significant impediment to the use and development of the lands. Clearly, allottees cannot use land they do not yet own. In addition, the entitlement remaining for the State and Native Corporations has an important chilling effect on development in some areas of the state. Secure land title is a fundamental prerequisite to development. Confusion about the eventual owner puts any significant exploration or investment on hold until the ownership is established. There are areas of the state where exploration or development—with its benefits of revenue to the state, and jobs and income for our citizens—awaits resolution of ownership. In some cases, even land ownership questions involving a small portion of an area can cause a delay on use of neighboring lands. In this way, the remaining entitlement has an effect that is disproportionably larger than the remaining acreage.

Resolving these entitlements will make land available to individual Alaskans for their personal use and enjoyment, and to the Corporations and the State to encourage the use and development of Alaska's lands.

A Promise That the Present System Cannot Keep

This legislation has the goal of largely completing these land transfers by 2009, the fiftieth anniversary of needed for a concentrated program is less than that required without the bill and without a concentrated effort to finalize conveyances by 2009. That is, it takes significant less funding to concentrate and finish the conveyances by 2009 than it does to string along small conveyances for decades. This latter method—which we employ today—inevitably requires BLM and state staff to continually revisit the same area of the state, and to continually re-adjudicate the same areas. It is expensive and slow. Implementing this program will cost additional money in the short run, but save money in the long run. We urge the Committee and the Senate to provide full funding for this program.

A Final Note

S. 1466 is a long and complicated bill. It is complicated because the land conveyance process is inherently complicated. We expect that as others review the bill, they may find problems or opportunities not addressed. We look forward to working with the committee to address these issues.

I would like to turn my attention to the remaining two bills before the subcommittee today.

S. 1354, THE CAPE FOX LAND ENTITLEMENT ACT

The state wholeheartily supports S. 1354, the Cape Fox Land Entitlement Act. Because of the rules of the Alaska Native Claims Settlement Act and the unique location of the Cape Fox Corporation's original land grants near Ketchikan, Cape Fox was denied the ability to acquire the quality lands as was envisioned under ANCSA. This legislation would enable the Cape Fox Corporation, the Sealaska Regional Corporation, and the U.S. Forest Service to pursue land exchanges that would resolve this inequity and make land available for use and development. The exchange will benefit the development of the Kensington mine project.

In closing, I again wish to express that State of Alaska's support for the legislation under consideration by the Subcommittee. Thank you coming to Alaska and providing Alaskans the opportunity to speak to you today.

Senator MURKOWSKI. We have included all the comments and written testimony in the record. I'm sorry to cut you off, but I do want to make sure we have ample time for hearing people who will testify.

I do have some questions for the panel. Beginning with you first, Mr. Rey, since you started off. You mentioned the valuation process. This has been an issue that has generated some discussion, certainly. What kind of valuation process will the Forest Service use to ensure that the exchanged lands are of equal value as required in our legislation?

Mr. REY. As drafted, the legislation provides that that determination of equal value be made by the Secretary of Agriculture. At the same time, Cape Fox and Sealaska Corporation will have the opportunity to present estimates of value and supporting information to the Secretary. And as I indicated, if you accept our suggestion, we will use standard appraisal practices and mechanisms that we typically include in all land exchanges.

If the pool of non-Federal lands available in S. 1354 is not sufficient to equalize values of the better lands selected by Cape Fox Corporation, Cape Fox and the secretary will mutually identify additional Cape Fox lands to equalize value.

So I think the process will be mutual in the sense that both sides of the exchange will have to agree on evaluations and will have to agree that they are fair market values that are being applied.

Senator MURKOWSKI. It's also my understanding that the lands that are being exchanged by the Forest Service are, I guess, heavily saddled by Federal mining claims. How will this affect the Forest Service management?

Mr. REY. One of the benefits of the exchange for the Forest Service is that we're simplifying our management regime in two ways. The one you mentioned is that many of the lands that will be acquired by either Sealaska or Cape Fox have mining patents on them. So it will no longer be necessary for us to facilitate these patents or arrange our management regimes around making sure that we recognize those patents. That will be for the patentholders and the Cape Fox Corporation or Sealaska Corporation to work out.

The second area that simplifies our management is once of the principle attractions to the exchange to the Federal Government is that we will resolve some split estate issues that currently burden our management of lands where we own the surface and Sealaska owns the subsurface.

Senator MURKOWSKI. Can you go a little bit more into detail on the split estate problems? What kind of specific problems are we causing with the present structure and situation?

Mr. REY. Where there are split estate issues, we always have the question of whether there is some potentially locatable mineral development or other subsurface resource that the owner of the subsurface estate wishes to develop, and if there is that potential, we have to accommodate it and provide access, reasonable access, to that development. Where we can unify our estate, then we're no longer burdened with trying to do that, and we can manage our lands much more freely than would otherwise be the case.

Senator MURKOWSKI. You'd mentioned in your testimony some significant benefits to the Government, and I'm assuming that this is what you're referring to?

Mr. REY. That is correct.

Senator MURKOWSKI. Would you just elaborate a little bit more on that?

Mr. REY. The benefit to the Federal Government is it simplifies our management regime considerably and allows us to block up ownership in areas where we will own both the surface and the subsurface resources. The benefit to Cape Fox is to get to finalize its allotment, and the benefit to Sealaska, comparable to the benefit to us, is that it resolves with us some of their split estate issues.

The benefit to the local community and southeast Alaska's economy, I think this exchange will also facilitate the development of the Kensington Mine project, and that project will result in significant job opportunities in southeast Alaska.

Senator MURKOWSKI. Thank you, Mr. Rey.

Mr. Bisson, I'll go to you here.

Mr. BISSON. Yes, Senator.

Senator MURKOWSKI. There are those who are concerned with the legislature that we have introduced regarding the conveyances relative to the committee grant selections that possibly this opens the door to new selections. Can you clarify exactly what this section does? This is section 101 of the legislation.

Mr. BISSON. As you know, Senator, section 6(a) of the Alaska Statehood Act created two categories of community grant entitlements. The State was allowed to take title to 400,000 acres of land from the national forest system, and an additional 400,000 acres of lands from public remaining lands. This section does not increase the State's entitlements in either category, but it allows selections which would have failed because they were too small to be conveyed, and confirms the validity of previously conveyed tracts that are less than 160 acres in size.

The Forest Service has previously approved all the national forest community grants application that are currently on file with the BLM, and the State has petitioned for approval selection to receive the full entitlements, so it's not creating new entitlements.

Senator MURKOWSKI. Could you explain what kind of situations concerning these reversionary interests, how that is going to apply and whether or not this will impact the management of conservation system units?

Mr. BISSON. Within the State, under other authorities, there have been previous transfers of land to the State and to various communities where the Federal Government retained a reversionary interest in the land in case the land wasn't used for the purpose it was given. This provision allows the State to clarify its title to some of these parcels by using a portion of its remaining entitlements to select the Federal Government's reversionary interest in properties that are already owned by State or owned by political subdivisions of the State.

Generally speaking, these properties are located in and adjacent to cities, towns and villages. I don't have a statewide list of the properties currently available, but we can provide that to your staff if you wish. As the provision is written, it would allow the State to select reversionary interests in property that are located in some conservation system units. However, these parcels are relatively small. They are already developed, generally, and they are within villages in some of these units, so they are within communities that are current.

Senator MURKOWSKI. University lands, entitlements for the University of Alaska, I'm hearing that there may be some confusion in the legislation, specifically in section 105, that addresses the entitlements for the University of Alaska. Can you put on the record exactly what this does?

Mr. BISSON. There is nothing in this bill that creates a new entitlement for the university. The provision in section 105 enables us to complete the conveyances of 456 acres that everyone agrees is still owed to the university under an entitlement that Congress authorized in 1929. So there is no new entitlements there.

Senator MURKOWSKI. Let's see here, on the land transfer bill, some are saying that the BLM planning process provides the vehicle for releasing withdrawn lands. Can you explain why we need to release the lands?

Mr. BISSON. I think, as Mr. Loeffler explained, you know, the land pattern in Alaska is very complicated, and through succeeding levels of legislation and succeeding withdrawals, there are residual withdrawals out there that once we complete these conveyances, when the Native allottees receive their lands, when ANCSA cor-

porations receive their land, and when the State receives its land, there will be a number of parcels of residual BLM-managed public land that are still encumbered by these old segregations.

What we're looking for is a relatively simple process to open these unencumbered land to the population of the public land laws. Once they are open, they would come under the requirements of our land use plan. They would be managed consistent with our existing plan. We would conduct NEPA analysis before we make any decisions on those lands. We just think at this point to go through a time-consuming process to open them to the laws is counterproductive, and we would certainly be open to working with the committee, with yourself and your staff if there are suggestions on how we can approve it to assure the public that we can address their concerns upfront, but we think we need this authority, and it will actually accelerate our ability to operate as we would in any other BLM Western State or any Western State in the country. Put us on the same footing.

Senator MURKOWSKI. Now, I know the answer to this question already, but I'd like you to put it on the record. Are Native allotments private land or Federal land and what about conservation system units?

Mr. BISSON. Native allotments are private lands. They are subject to the certain restrictions under Federal law. Native allotments are privately-owned lands regardless of where they are located. If they are in a conservation unit, they are still private lands.

Senator MURKOWSKI. And, then, just to follow up on that, will the Native allotment subdivision act—you haven't touched on that as much as you have on conveyances—is this going to be implemented any differently in conservation system units?

Mr. BISSON. I don't believe it will.

Senator MURKOWSKI. Thank you. I appreciate your comments and your testimony. Mr. Loeffler, you went into some great detail in terms of the failure to convey over a number of years since statehood, those lands promised to us—and I like the reference to the promised land. We do want to make sure that that promise is very true. How much in recent years has been transferred to the State?

Mr. LOEFFLER. To go over the last 5 years, the State has had good years over the last 2 years. Received about 470,000 acres this year, and about a quarter of a million the previous years. However, the previous 3 years, it was about 50,000 acres. If you take a 5-year average, it would take about 85 years to complete our entitlements. If you take just the average of the 2 good years, it would take approximately 40 years to complete our entitlements at that rate.

Senator MURKOWSKI. So that bolsters your statement earlier that at the rate we're been going, we won't possibly make it your lifetime or possibly our children's?

Mr. LOEFFLER. Yes, Senator.

Senator MURKOWSKI. Why is it important to resolve the Native allotments in order for the State to receive its title to its lands?

Mr. LOEFFLER. Well, it's important for two reasons, Senator. The first, of course, is because the individual allottees are citizens of the State, and we believe it's important to get the land that is due them. But it's important for the overall transfer process, because

if the allotment is—the location is not in fact known, then it's difficult for us to prioritize our lands, knowing there is a hole somewhere.

And let me give you one additional example. Seven years after we received title to land and then sold that land to an Alaskan, there was an allotment, if you will, that popped up in that area and put a cloud on the title 17 years after we sold it to an Alaskan. So as a result of the cloud on the title, we had to offer our citizens the chance to refund and give the land back, because we owe them, when we sell them land, true fee-simple interest, so we had to refund the sale of a fee simple interest to these individuals, and we eventually resolved with the allottee, but these problems will linger in the future, and so it's important to resolve them once and for all so they don't happen again.

Senator MURKOWSKI. How do you envision that this process will work if we're able to pass this legislation? Obviously, our goal is very ambitious to expedite the process so that by the year 2009 the transfers are complete. How do you see it working within the State?

Mr. LOEFFLER. Well, I have really developed this through my discussions with Henri Bisson and staff. I would like to compliment them on working with the State and others to develop this. I imagine working through region by region, and in each region, taking the people and the funding necessary to take a final critical look at the allotments, the ANCSA conveyances, and then the State transfers. So by being able to get the critical mass of interest in one area, you can finish it once and for all, and then move on to the next region, rather than the way we do it which is doing a little bit here, a little bit there, come back here and readjudicate it, do a little bit there. So it's my expectation that we will do it that way, but, of course, it really is by the BLM process.

Senator MURKOWSKI. But you're prepared to assist in whatever you need to do to make the process work?

Mr. LOEFFLER. Yes, Senator.

Senator MURKOWSKI. You mentioned a little bit in your testimony earlier the problems that are associated when we have withdrawals that are lingering and hanging. Can you give some specific examples as to what we're dealing with in the State, things that can't move forward, projects that can't happen? What is the real life example of the situation we're at here in Alaska with not having such a substantial amount of our land conveyed and these withdrawals hanging out there?

Mr. LOEFFLER. Well, let me give you an example of resource development projects that are sort of awaiting land transfers. One example is the North foothills area where there are hundreds of thousands of acres. This is portion of the North Slope that belongs to neither the State, nor the ASRC, Alaska Slope Regional Corporation, so neither can lease them for oil because of competing land selections.

The foothills area is one of the most promising interior areas for the oil and gas industry, and the area had to be excluded from our recent State land sales. Once those selections are clean up, I expect the leases to go forward quite quickly. That's an example of just plain competing selections. It's not—that one did not involve lin-

gering withdrawals. I can give you some examples of those, if you wish.

Senator MURKOWSKI. Give me one.

Mr. LOEFFLER. Okay. One good example of a lingering withdrawal is hydroelectric power. The Federal Government established those withdrawals to make sure the hydroelectric projects were kept in Federal ownership for future development, but in some areas, Bradley Lake near Homer, we have already built a hydroelectric plant. We have been unable to get the land transfers because of the withdrawals.

So section 1 of 4 of this legislation would allow us to get the land that we own that we need to manage and there is no purpose for that withdrawal. That didn't hold up Bradley Lake. Places where they have held up some work is, for example, in 40 Mile. In the 40 Mile, the original withdrawal was established to figure out where the wild and scenic river was. BLM then went through a public process to establish that wild and scenic river, and it's within the 2-mile linear strip of the withdrawal.

What you have, then, is little bits outside, within the original corridor, but are outside the wild and scenic river that are withheld from State ownership, and it's a historic mining district, and yet miners can't work or stake claims in there. So with respect to that portion of the promised land, if you will, it's time to let our acreage go, so to speak.

Senator MURKOWSKI. Very good. Thank you. I appreciate your testimony and your willingness to respond to the questions. I also appreciate your time here this morning. At this time, I would like to call up those that will sit on our second panel. Mr. Nelson Angapak, Mr. Peter Van Tuyn, Rosa Miller, Mr. Steve Borell, Mr. Bruce Borup, and Mr. Tim Verrett. Good morning. Welcome to the subcommittee. I appreciate you're accepting our invitation to join us here morning. I will go down my list in the order that I have them here. No particular order other than that's the way it is on my schedule. So we will begin first with Mr. Nelson Angapak from the Alaska Federation Of Natives. Mr. Angapak, welcome and good morning.

Mr. ANGAPAK. Good morning. Welcome to Alaska.

Senator MURKOWSKI. Before you begin, I will remind everyone, we do have the timer up here on the dais, and we will let you know when you're getting close to time, but we will help you with that, too. Thank you. Go ahead, Mr. Angapak.

STATEMENT OF NELSON N. ANGAPAK, JR., VICE PRESIDENT, ALASKA FEDERATION OF NATIVES

Mr. ANGAPAK. Thank you very much for the opportunity to testify on these three bills. For the record, we want to thank you for keeping the record of this hearing open for at least 2 weeks. We would also like to go on record to request that the committee complete the field hearings in the State of Alaska in the immediate future on at least S. 1466 and S. 1421. I do believe if this request is granted that the inclusivity of the statements that was made earlier will be fruitful.

Senator Murkowski, in 1974 just before the AFN convention, when Kurt McVee was the State Director of BLM, in a public hear-

ing I stated that I did not think that during my lifetime that the promises of land entitlements pursuant to the Alaska Native Claims Settlement Act would be fulfilled. Further I stated that I did not think that it would be fulfilled during the lifetime of my children or possibly my grandchildren. S. 1466 gives me some hope that what was promised pursuant to ANCSA might be fulfilled during my lifetime.

This is a good bill. We agree in principle and support in principle the intent of S. 1466. We do have, however, have some concerns with it, and they are identified in my written statement. For example, section 211, procedures related to dissolving of lapsed Native corporations. This provision in effect makes the regional corporations trustees for the lands for the land of dissolved Native village corporations. Our recommendation is that this provision be modified in such a manner that the regional corporations would serve in the role of trustee for these lands, be provided with some form of indemnity from any and all forms of litigation, because of the role that they provide as trustees for this lands that otherwise should have gone to the lapsed village corporations.

Perhaps the most challenging provision of this bill is title 3. It removes some of the existing rights that are presently enjoyed by the Native allottees. It is our hope that before this bill is enacted that we will have an opportunity to get together with your staff to look for ways and means of correcting those. For the record, AFN supports the intent of S. 1354. It is our hope that bill will favorably act.

And, lastly, on S. 1421, this is a very sensitive bill from the standpoint of the fact that we within the Native community have some concerns of our lands being sold to third parties. However, I think S. 1421 creates a balance between the sensitivity of selling land to third parties, because this bill provides a tool for Bureau of Land Management, BIA, and all the trustees that if in fact a Native individual allottee decides that they are going to sell their land to third parties, this bill provides the tool for those who are acting as trustees on behalf of that allottee.

Because I do believe if this bill is passed, it will allow the trustees to find ways and means of negotiation on the best interests of the Native allottee. So I believe that this bill does create that balance. And thank you very much. I'll be open for questions.

[The prepared statement of Mr. Angapak follows:]

PREPARED STATEMENT OF NELSON N. ANGAPAK, SR., VICE PRESIDENT, ALASKA FEDERATION OF NATIVES

INTRODUCTION

Good morning, Honorable members of the Subcommittee on Public Works and Forests of the U.S. Senate Committee on Energy and Natural Resources, ladies and gentlemen:

For the record, my name is Nelson N. Angapak, Sr. Vice President, Alaska Federation of Natives (AFN). As the Honorable Lisa Murkowski knows, AFN is a statewide Native organization formed in 1966 to represent Alaska's 100,000+ Eskimos, Indians and Aleuts on concerns and issues which affect the rights and property interests of the Alaska Natives on a statewide basis.

On behalf of AFN, it's Board of Directors and membership, thank you very much for inviting me to submit my comments regarding S. 1466, a bill to facilitate the transfer of land in the State of Alaska, and for other purposes; S. 1421, a bill to authorize the subdivision and dedication of restricted land owned by Alaska Na-

tives; and S. 1354, a bill to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes. My comments will concentrate on S. 1466, and in particular, Title II of this bill.

We applaud the efforts of the Honorable Lisa Murkowski in resolving the decades-old land issues in the state of Alaska.

I ask that this written statement and my oral comments be incorporated into the record of this public hearing. I further request that the record of this hearing remain open for at least two weeks so that representatives of the Alaska Native Community may submit their comments regarding these bills as well.

ANCSA CORPORATE LANDS

Pursuant to the terms and conditions of the Alaska Native Claims Settlement Act (ANCSA), enacted into law on December 18, 1971, Congress authorized transfer of 44.5 million acres of land back to the Alaska Natives through their ANCSA Corporations. ANCSA promised, in part, that the settlement of the claims of the Alaska Natives against the federal government "should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives . . ."[1]

To date, none of the village and regional ANCSA corporations created pursuant to ANCSA has received their full land entitlements. One of the reasons of this delay is the lack of funds needed for the survey of the lands selected by the ANCSA corporations.

S. 1466

S. 1466, a bill to facilitate the transfer of land in the State of Alaska, and for other purposes, is a step in the right direction in resolving unresolved land issues impacting the State of Alaska, the ANCSA corporations and the Native Allotees. We agree in principle on the intent of S. 1466.

In introducing S. 1466, the Honorable Lisa Murkowski correctly stated that Bureau of Land Management's (BLM) "land conveyance program in the State of Alaska is the largest and most complex of any in United States history. For many years, BLM's primary goal was to convey title to unsurveyed lands to the State and Native Corporations by tentative approval and interim conveyance, respectively. This management practice allowed the State and Native Corporations to manage their lands, subject only to the survey of the final boundary.

This legislation will accelerate release of lands for conveyance to Native corporations and the State of Alaska. It will complete land patterns to allow land owners to more efficiently manage their land. It will clarify that certain minerals can be transferred to Native landowners. And frankly, split estates can be minimized. The University will be given the opportunity to select the remaining Federal interests in lands the University already owns, that will likely produce economic opportunities not presently available under this land lock."[2]

We are looking at S. 1466 as a tool for BLM that will enable it to substantively complete the federal government's conveyance obligations to ANCSA corporations, hopefully by the end 2009.

The following is our section-by-section comments on Title II of S. 1466:

Sec. 201. Land Available After Selection Period

This section enables BLM to use Federal lands that were not available during the original ANCSA selection period, but are now available, to fulfill village corporation entitlements. We recommend that the implementation of this section be done in such a way that BLM and the ANCSA corporations affected will work cooperatively to the mutual satisfaction of both parties.

Sec. 202. Combined Entitlements

This section addresses several issues critical to the fulfillment of ANCSA. AFN supports this section with the following comments:

1. Establishes a deadline by which Regional Corporations must complete reallocation under section 12(b): We recommend that BLM works very closely With tire regional corporations who are and will be impacted by this mandate.
2. This section also authorizes BLM to merge 12(a) and 12(b) land selections of the village corporations that were timely submitted by December 18, 1974 and December 18, 1975. We recommend that BLM works closely with the regional and village corporations in the implementation of this section.

[1] § 2(b) of P.L. 92-203

[2] Congressional Record Senate; page 59975, July 25, 2003.

Sec. 203. Conveyance of Last Whole Section of Land

This provision applies to lands selected under section 12 of ANCSA, but not to village corporations in Southeast, Alaska whose original entitlements were 23,040 acres. We support its intent.

Sec. 204. Discretionary Authority To Convey Subsurface Estate in Pre-ANCSA Refuges

This section gives the Secretary of the Interior discretionary authority to permit subsurface conveyance in place beneath village lands within certain refuges as an alternative to the mandatory creation of split estates. The U.S. Fish & Wildlife Service (FWS) must work closely with the affected regional corporations in the implementation of this provision to the mutual satisfaction of all the parties affected by this provision.

Sec. 205. Conveyance of Cemetery Sites and Historical Places

We are still trying to understand this section so we are not prepared to make specific substantive comments on this section as it is written. The best we can to at this time is to recommend that Congress considers the extension of the application of existing federal statutes that provide protection of historical and cultural sites to 14(h)(1) ANCSA land selections by adopting legislative language that would authorize such protection.

Sec. 206. Approved Allotments

This section codifies the document entitled "Audit Summary ANCSA 14(h)(6) Acreage dated July 1983" and found in 48 Federal Register 37086, August 16, 1983. Fixing the total acreage at 184,663 acres wilt create another definite number that will make it easier to accelerate the finalization of ANCSA land entitlements pursuant to § 14(h) of ANCSA.

Sec. 207. Allocations Based on Population

This section offers ten of the twelve Regional Corporations three options for final resolution of 14(h)(8) entitlements in the following fashion:

1. A Regional Corporation may elect to take its percentage share of a fixed acreage amount as settlement for a final 14(h)(8) entitlements. The 255,000 acres set by this legislation will allow those corporations wanting to settle their 14(h)(8) entitlements to do so now.
2. The second method is that each corporation who chooses to do so is authorized to enter into direct negotiations with the Secretary to settle its entitlement independent of other corporations.
3. The last method is the status quo.

These provisions allow the regional corporations with methodologies through which they may finalize their § 14(h)(8) land entitlements, again a good provision.

Sec. 208. Authority To Withdraw Lands

This section authorizes the Secretary to withdraw lands that would allow the regional corporations to satisfy their land entitlements except for those lands located within the boundaries of the conservation system units and defined in section 102 of ANILCA. We support this provision as well.

Sec. 209. Bureau of Land Management Land

§ 17(d)(1) of ANCSA gave the Secretary of the Interior an open-ended authority to withdraw lands for further study and to open such lands through any classification or reclassification. At the very least, this section would provide the Secretary with specific authority to close or to open lands to certain uses or appropriations. Congress should consider the merits of closing the open ended authority provided to the Secretary of the Interior pursuant to § 7(d)(1) of ANCSA and this provision seems to do that.

Sec. 210. Automatic Segregation of Land for Underselected Village Corporations

This section streamlines the current process for fulfilling the land entitlements of the underselected villages. This section authorizes the appropriate federal agencies and the underselected village corporations with the right to negotiate a final agreement as to exactly which lands shall be conveyed to the village corporations to satisfy corporation's land entitlement. This process, when implemented, must involve the regional corporations where the underselected village corporations are located.

Sec. 211. Procedures Relating to Dissolved or Lapsed Native Corporations

This section provides a mechanism for the completion of ANCSA entitlements even when the benefiting corporation is not currently operational or no longer in ex-

istence. One of the most unique aspects of ANCSA is that the direct beneficiaries are State-chartered corporations. This process, for the most part, will apply to ANCSA village corporations. The ANCSA village corporations, from time to time, when they do not meet the Alaska state corporate and securities statute find themselves dissolved or lapsed. Such corporations can be reestablished as ANCSA corporations by meeting the State of Alaska's corporate statutes.

Pursuant to this section, the ANCSA Regional Corporation would assume the responsibility for administering the assets, including land holdings, of a lapsed or dissolved ANCSA village corporation.

AFN recommends that the ANCSA regional corporations who would serve in the role of trustee for the land entitlements of such dissolved or lapsed ANCSA corporations be provided with indemnity or immunity from any and all forms of litigation for the role they played as land trustees for the lapsed/dissolved ANCSA village corporations located within their boundaries.

Sec. 212. Settlement of Remaining Entitlement

This section authorizes the Secretary and the ANCSA corporations to resolve remaining land entitlements of the ANCSA corporations through good faith negotiations between the parties involved.

Sec. 213. Conveyance to Kaktovik Inupiat Corporation and Arctic Slope Regional Corporation

Kaktovik is a Native village that was entitled to a total of four townships of land pursuant to § 14(a) of the Alaska Native Claims Settlement Act. § Sec. 12(a)(1) of ANCSA restricted Kaktovik to select only three townships in the Arctic National Wildlife Refuge. This section would authorize the Secretary of the Interior to satisfy the land entitlements of Kaktovik in accordance to the terms and conditions of ANCSA.

AFN supports, in principle, the terms and conditions of Title II of S. 1466. We made some recommendations in some of the sections of Title II, with this in mind; it is our hope that our recommendations will be incorporated into this bill insofar as this provision is concerned.

Our additional comments relative to ANCSA land selections are as follows:

1. Section 107 of Title I, EFFECT OF FEDERAL MINING CLAIMS, authorizes the Secretary to convey former mining claims within State selected lands to the State of Alaska with no charge to Alaska's land entitlements. AFN recommends that the former mining claims located within the boundaries ANCSA selected lands be conveyed to the ANCSA Corporations with no charge to ANCSA land entitlements much the same way that is would be authorized pursuant to Section 107 of Title I.

2. Section 108 of Title I, LANDS MISTAKENLY RELINQUISHED OR OMITTED, allows the State to seek permission to correct clerical errors made in previously-filed selection applications or relinquishments. The State must demonstrate to the satisfaction of the Secretary with management jurisdiction over the lands that a mistake was made. This provision eliminates the need to employ a lengthy, cumbersome, and potentially costly exchange process to correct obvious errors. AFN recommends this concept be extended to the ANCSA corporations as well.

TITLE III—NATIVE ALLOTMENTS

Title III of S. 1466 provides the federal government with ways and means of streamlining the current procedures on the adjudication of Native Allotments. We support the intent of Title III; but at the same time, we have some serious concerns that we would like to bring to the attention of the committee concerning this title.

First and foremost, we understand that Congress has a constitutionally guaranteed plenary right to legislate issues impacting the American Indians and the Alaska Natives. While recognizing this, we would also remind the committee that Congress has a duty of loyalty to Indians and therefore "must act with good faith and utter loamy to the best interests of the Indians" as stated in *Seminole Nation* v. *U.S.*, 316 U.S. 286, 296-97 (1942). In other words, when enacting legislation pursuant to its power to legislate Indian affairs, Congress must fulfill its fiduciary obligation toward American Indians and the Alaska Natives.

The framers of the U.S. Constitution made certain that Congress has fiduciary responsibility over American Indians, including the Alaska Natives. Therefore, Congress must look at Title III of S. 1466 with a heightened scrutiny because it has a potential of violating equal protection guarantees of the Alaska Natives afforded them by the U.S. Constitution.

Please allow me to address some of the major concerns we have that merit closure scrutiny. They are as follows:

1. Existing right: applicants (or heirs) now have the right to amend the description of their allotments if the government placed the allotment in tile wrong location or the allotment does not contain the correct number of acres.

Section 304(f)(5) eliminates the applicants' right to amend even if the government caused the error.

2. Existing right:applicants (or heirs) have the right to get closed allotment cases reopened/reinstated if BLM closed the case in error or in violation of the applicants' due process rights (did not give notice or opportunity for a hearing).

Section 304 (f)(1) and (f)(3) eliminates all rights to reopen/reinstate closed allotment eases.

3. Existing right: applicants (or heirs) have the right to file reconstructed applications in cases where the government lost their original application.

Section 304 (f)(1) eliminates all rights to file reconstructed applications.

4. Existing right: applicants (or heirs) who have already filed reconstructed applications have a right to a hearing to prove they filed an application.

Section 304 (f)(2) eliminates this right and instead allows BLM to reject an already filed reconstructed application unless the BLM's file already contains the following information:

a. the name of the person who took the original application and the agency that person worked for;
b. the month and the year the original application was submitted;
c. the specific address where the original application was submitted;
d. two affidavits attesting to the applicants' qualifying use; and
e. two affidavits from non-family members attesting that they know the original applications were filed.

5. Existing right: applicants that relinquished a part or all of an allotment unknowingly or involuntary have the right to have their case reopened to determine if the relinquishment is valid.

Section 304 (f)(3) eliminates this right.

6. Existing right: applicants (or heirs) have a right to a hearing to determine certain factual issues in their allotment cases and the hearings are now conducted by impartial judges from the Office of Hearings and Appeals under rules set by federal regulations.

Section 501 eliminates this right and instead establishes a new but undefined process for hearings that may or may not be governed by existing federal regulations and may be conducted by any employee of the Department of the Interior including BLM employees.

7. Existing right: applicants (or heirs) have a right to appeal BLM's decision to the Interior Board of Land Appeals under rules governed by federal regulations.

Section 501 eliminates this right and instead establishes a new appeals process that may or may not be governed by existing federal regulations and may be decided by any employed of the Department of the Interior including BLM employees.

For the purposes of these comments, we identified the existing rights that the Alaska Native Allotees presently enjoy and then identified the sections of S. 1466 that eliminates these existing rights. AFN recommends that this committee amend the above referenced sections so that the existing rights of Alaska Native applicants will be restored. To that end, AFN offers assistance in crafting amendments to S. 1466 that will ensure that Congress continues to fulfill its fiduciary obligation toward Alaska Native allotment applicants.

TITLE IV—FINAL PRIORITIES; CONVEYANCE AND SURVEY PLANS

This title, in part, mandates the final prioritization of village and regional corporation land selection by setting a 36 month for village corporations and a 42 month deadline for regional corporations by which final priorities must be filed after the enactment of this legislation. It also sets a limit on remaining overselections by the ANCSA Corporations. AFN has one major concern over this title.

The ANCSA regional corporations selected their land entitlement necessarily based, in part, on the natural resources potential of the lands withdrawn for their land selections; and they made their land selections in a timely basis. Over the years, the federal government has requested that the ANCSA regional corporations reduce their overselections by relinquishing some of their selected lands. The regional corporations are willing to comply with such requests; but they are also caught between rock and a hard place, not of their choosing or the choosing of the federal government.

For example, some of the land selections of Ahtna, Inc. are totally surrounded by what is now Wrangell St. Elias National Park. Ahtna, at one point in the past, attempted to gain access to their selected lands located within this National Park but experienced difficulties in obtaining one. Wrangell St. Elias National Park is managed pursuant to the rules and regulations that govern this type of a National Park. Because of this and other factors, the managers of this National Park could not, in good conscience, allow Ahtna access to their selected lands so they could do additional natural resources exploration before relinquishing some of their land selections. Ahtna, as a for profit regional corporation, wants to keep its land selections that has the greatest potential in natural resources for the benefits of its shareholders.

This committee should consider adding legislative language to this draft legislation that mandates that the managers of conservation system units such as Wrangell St. Elias National Park provide access to regional corporations such as Ahtna to their selected lands for the purposes of additional natural resources exploration so that they might reduce their overselections as mandated by this bill. Short of adopting such language, this committee should consider exempting the ANCSA regional corporations from relinquishment their lands selections to a limit set by this section until such time a reasonable solution to this issue is arrived at.

TITLE V—ALASKA LAND CLAIMS HEARING AND APPEALS

Sec. 501. Alaska Land Claims Hearings and Appeals

This title and section authorizes the Secretary of the Interior to establish a specialized hearings and appeals process in Alaska to issue final decisions for the Department of the Interior for disputed Alaska land transfer issues. AFN feels the key for the successful implementation of this provision would be the judges who would be hired by the Secretary for this purpose. We hope that these judges will be those familiar with ANCSA, Alaska Statehood Act, and the Native Allotment statutes. Since ANCSA and the Native Allotments statutes are considered Indian Legislation, some of the judges hired to staff this specialized hearings and appeals process must be familiar the implementation of Indian legislation.

TITLE VII

Sec. 701. Authorization of Appropriations

AFN recommends that this provision be amended so that it authorizes and appropriates necessary sums as are necessary to carry out the purposes of this Act; otherwise, it may end up as an unfunded mandate from Congress to the Departments of Agriculture and Interior.

This concludes my written statement; and I would be willing to answer any questions the committee may have of me concerning this testimony.

On behalf of AFN, thank you very much for giving the opportunity to submit this statement.

Senator MURKOWSKI. Thank you. I appreciate your testimony this morning. Let's next go to Mr. Steve Borell of the Alaska Miners Association.

STATEMENT OF STEVEN C. BORELL, EXECUTIVE DIRECTOR, ALASKA MINERS ASSOCIATION, INC.

Mr. BORELL. Good morning, Senator Murkowski, and thank you very much for the opportunity to testify on these bills, and thank you also for taking an initiative to introduce these two very important pieces of legislation, and by that I'm referring firstly to S. 1354.

We wish to go on record in support of this legislation. This act will accomplish important land exchanges that will result in added economic opportunity for Cape Fox Corporation, city of Juneau, and all of southeast Alaska will also benefit from this legislation as it adds to the economic diversity of the region.

The other bill we would like to comment on is S. 1466. This issues of the land status and access to land in Alaska has been a major topic of certain Alaskans since before statehood. Indeed, land

status and the difficulty of the average citizen to obtain land in the territory of Alaska was a major force in the drive for Alaska to become a State. Through the Statehood Act, the new State was promised it could select and obtain title to approximately 104 million acres from the total of 365 million acres. However, this promise has been slow to be realized.

This has not been the fault of any agency, but due rather to the size and complexity of the task and several issues including the settlement of Native land claims and subsequent debate over Federal conservation system units. We're pleased that S. 1466 will address and correct many of the laws to allow transfer of lands in a more straightforward and simplified manner. However, we have three major issues of concern and several other suggests for change, and I would just like to address these major interests and concerns at this point. The first major concern involves lingering withdrawals.

If S. 1466 is to be of real value to the State of Alaska without hurting the long-term interests of the State, it is absolutely essential that the Federal lingering withdrawals—lingering Federal withdrawals be removed so the State's top files will fall into place and the affective land be prioritized for conveyance to the State. Lingering withdrawals, also known, as mentioned by the previous speaker there, as outdated withdrawals are withdrawals for which the original purpose of the withdrawal no longer exists.

All across Alaska, there are lingering withdrawals of various types. These lingering withdrawals must be removed at the earliest possible date so the State can evaluate and compare these lands with other selections to ensure that the highest value lands are conveyed to the State. The importance of removing these lingering withdrawals has been recognized by many individuals, including the 23rd Alaska State Legislature which passed House Joint Resolution No. 48 relating to Federal land withdrawal, which called for removal of these lingering withdrawals.

Also, the BLM Alaska Resource Advisory Council passed a resolution calling for the removal of lingering withdrawals. It is appropriate that removal of these withdrawals become a part of this legislation. The second major concern deals with the proposed new authority of BLM to close lands for mineral entry. Section 209 includes a new authority for BLM to close lands both as part of a land planning process and also as it may desire with conditions or restrictions. This new authority to any agency is without precedent in this Nation and is not appropriate.

Closing land to mineral entry is a major Federal action carrying with it some of very gravest possible consequences for the Nation. Mineral closures must occur only through a specific act of Congress to ensure that the needs of the Nation are probably considered. No lesser test is workable or appropriate considering the importance of the action. State of Alaska at one time allowed the Department of Natural Resources to close lands to mineral entry under State law, but this provision had to be changed because the agency could not control its appetite for closures.

Many of millions of acres of State land were closed as part of land management plans with little justification and little consideration of the potential adverse importance on the future State and

its economy. As a result, approximately 10 years ago, legislation—the legislature changed the act to allow not more than 640 acres to be administratively closed.

This new authority is at the very heart of the attack against the Federal mining law. Former Senator Dale Bumpers of Arkansas, for him this very provision was a centerpiece of many bills that he introduced to change the law on numerous occasions. Senator Bumpers chided and even taunted Senators Stevens and Murkowski that all he wanted was the same provision in Federal law that Alaska had in its law; i.e., administrative closure. Thank you very much.

[The prepared statement of Mr. Borell follows:]

PREPARED STATEMENT OF STEVEN C. BORELL, EXECUTIVE DIRECTOR, ALASKA MINERS ASSOCIATION, INC.

Thank you, Senator Murkowski, for the opportunity to testify on these bills. Thank you also for taking the initiative to introduce these two very important pieces of legislation.

S. 1354, CAPE FOX LAND ENTITLEMENT ADJUSTMENT ACT OF 2003

We wish to go on record in support of this legislation. This Act will accomplish important land exchanges that will result in added economic opportunities for the Cape Fox Corporation. The City of Juneau and all of Southeast Alaska will also benefit from this legislation as it adds to the economic diversity of the region.

S. 1466, THE ALASKA LAND TRANSFER ACCELERATION ACT OF 2003

Introductory

The issues of land status and access to land in Alaska have been major topics of concern for Alaskans since before Statehood. Indeed, land status and the difficulty of the average citizen to obtain land in the Territory of Alaska was a major force behind the drive for Alaska to become a state. Through the Statehood Act the new State was promised it could select and obtain title to approximately 104 million acres from the total 365.5 million acres that make up Alaska. However, this promise has been slow to be realized.

This has not been the fault of any agency but is due rather to the size and complexity of the task and several issues including settlement of the Native land claims and the subsequent debate over designation of federal conservation system units. Another factor is that land title issues are very detailed and not well understood by the general public. All this has been exacerbated by the fact that many of the requirements now in various laws were originally established for other states and circumstances and they do not fit Alaska's needs. We are pleased that S. 1466 will address and correct many of these laws to allow transfer of the lands in straight forward and simplified manner.

However, we have identified three items of major concern and some other items that require changes to make this legislation workable.

ITEMS OF MAJOR CONCERN

The three major items of concern involve lingering withdrawals, a proposed new authority for the Bureau of Land Management (BLM) to close lands to mineral entry and a proposed new forfeiture provision whereby the State of Alaska could be forced to forfeit land entitlement not yet conveyed.

1. Lingering withdrawals—If S. 1466 is to be of real value to the State of Alaska, without hurting the long term interests of the State, it is absolutely essential that several lingering federal withdrawals be removed so the State topfilings can fall into place and the affected lands prioritized for conveyance to the State. Lingering withdrawals, also known as outdated withdrawals, are withdrawals for which the original purpose of the withdrawal no longer exists.

All across Alaska there are lingering withdrawals of various types. The magnitude of this problem is not known and as recent as a few days ago the BLM was not able to provide a complete listing of these withdrawals and the total acreage affected by each. The amount of land covered by the lingering withdrawals has been estimated to be possibly several million acres. What is known is that some of the lands covered by lingering withdrawals have high potential for minerals and have

been selected by the State of Alaska and/or Native Corporations. However, because these lands are withdrawn, they cannot be transferred to either the State or Native Corporations.

Furthermore, these lingering withdrawals must be removed at the earliest possible date so the State can evaluate and compare these lands with its other selections to ensure that the highest value lands are conveyed to the State. This is especially true given the restrictive time limitation required for final prioritization.

The importance of removing these lingering withdrawals has been recognized by many groups and individuals. The 23rd Alaska State Legislature passed House Joint Resolution No. 48, relating to federal land withdrawals, which called for removal of these lingering withdrawals. Also, the BLM Alaska Resource Advisory Council (RAC) has passed a resolution calling for removal of these lingering withdrawals.

As stated previously, it is absolutely essential for the long term interests of the State of Alaska that these lingering withdrawals be removed before the State commits to any irrevocable conveyance decisions. It is appropriate that the lingering withdrawals to be removed as part of this legislation and that lists, maps and acreages of the withdrawals be developed to define the magnitude of the problem.

2. Proposed new authority for the BLM to close lands to mineral entry—Sec. 209 includes a new authority for the BLM to close lands to mineral entry 1) as part of a land use plan, and 2) as it may desire, without any condition or restriction. To give this new authority to any agency is without precedent in this Nation and is totally unacceptable.

Closing any land to mineral entry is a major federal action carrying with it some of the very gravest possible consequences for the Nation. Mineral closures must occur only through a specific direct Act of the Congress to ensure that the needs of the Nation are properly considered. No lesser test is workable or appropriate considering the importance of the action.

The specific language of concern is in Sec. 209(a)(1) and in 209(c).

> In 209(a)(1) the subsection reads in part "(1) IN GENERAL—Notwithstanding revocation of a withdrawal under section 17(d)(1) . . . the Secretary may classify or reclassify any land administered by the Bureau of Land Management in the State to open *or close* the land to any form of appropriation or use under the public land laws." The phrase *"or close"* must be removed.
>
> In 209(c) the subsection reads in part "LAND INCLUDED IN AN APPROVED RESOURCE MANAGEMENT OR LAND USE PLAN—Land that is included in an approved . . . may be opened *or closed* to location and entry . . ." The phrase *"or closed"* must be removed.

The State of Alaska at one time allowed the Department of Natural Resources to close lands to mineral entry under State law but this provision had to be changed because the agency could not control its appetite for closures. Several million acres of State land were closed as part of land management plans with little justification and with little consideration of the potential adverse impacts on the future of the State and its economy. As a result, approximately 10 years ago the Legislature changed the law to allow not more than 640 acres of land to be administratively closed to mineral entry. If a larger area is to be closed, the closure must be approved by the Legislature and signed by the Governor.

This new authority proposed in Sec. 209 is at the very heart of the attack against the General Mining Law that has occurred over the past 20 or more years. For former Senator Dale Bumpers of Arkansas this very provision was the centerpiece of his many bills to change the Mining Law. On numerous occasions Senator Bumpers chided and even taunted Senators Stevens and Murkowski that all he wanted was the same provision in federal law that existed in Alaska State law, i.e., administrative closure to mineral entry. Given the recent behavior of the previous Administration in Washington, DC, such a provision would surely have been used to close nearly all public lands in this entire country.

The impact of this proposed new authority would go far beyond the borders of Alaska. Such a provision would, over time, be applied throughout the country and our well-founded fears of the previous administration would be realized.

3. Proposed new land forfeiture provision—Sec. 404(e) includes a new provision whereby the State of Alaska could, under a certain set of circumstances, be forced to forfeit land entitlement promised in the Statehood Act. This subsection states that "If the State fails to relinquish a selection under paragraph (1), the Director *shall reject the selection".* This subsection does not give the Director any discretion whatsoever and would result in forfeiture of land entitlement promised to the State of Alaska in the Statehood Act. This forfeiture provision must be removed.

Other Items (In the order they appear in S. 1466, not by priority)

4. Removal of reversionary interests—Sec. 103 to remove various reversionary interests, including those referenced regarding the University of Alaska, is very important and will greatly simplify the complex land issues facing the BLM and the State.

5. Power site and hot spring withdrawals—Sec. 104 to address power site and hot spring withdrawals will greatly simplify dealing with these withdrawals. It is especially important that the requirement to petition Congress for private relief legislation be removed as is being proposed.

6. Mining claims—In Sec. 107(b)(2)(A) the statement needs to be clarified to read "(A) shall not include more than 1,280 *contiguous* acres of land *per conveyance*;" (New words in italic.)

7. Mistakes and omissions—Sec. 108 is very important and is essential for this piece of legislation to work effectively.

8. Judicial review—Sec. 209(a)(2) regarding judicial review should be moved to a new subsection (d) so it applies to the entire Sec. 209.

9. Need to be certain that lands will be opened—In Sec. 209(b) the BLM is given the authority that it "may" open 17(d)(1) withdrawals that are not otherwise withdrawn or reserved. This needs to be changed to ensure that these lands are indeed opened and provide this certainty. With new words in italic and removed words [bracketed] we recommend that the phrase be changed to read ". . . but not otherwise withdrawn or reserved, [may be] *shall be* opened, without environmental review, to all forms of appropriation . . ." To ensure proper public notification it may be necessary to specify publication in the Federal Register contingent upon completion of some other actions. However, waiting to open these d(1) withdrawals until after completion of the 42 months (3.5 years) allowed in Sec. 403(a) is not soon enough. Some other condition must be identified to determine the date by which the d(1) withdrawals shall be opened.

10. Definitions needed—In Sec. 404 the terms Irrevocable priorities, Topfiled priorities and Revocable priorities need to be defined and examples given to ensure that everyone understands what these terms mean and the consequences of assigning these priorities to a given area of land.

11. Insufficient time for State to set priorities—In Sec. 404 the State has only 180 days (6 months) from notification to file its selection priorities for the Regional Conveyance and Survey Plan areas. This is not enough time. The State must have more time and must be able to see selection priorities for all Regional Conveyance and Survey Plan areas at the same time. If the State cannot carefully evaluate all the areas at the same time it will not be able to effectively prioritize its selections.

12. Financial assistance—In Sec. 404(8)(2) it needs to be clarified that the State will receive funds for the evaluation and prioritization of the lands that become available as d(1) withdrawals are removed.

13. Administrative law judges—Sec. 501 establishes a hearings and appeals process and recognizes the need for administrative law judges. This is very important. The current caseload for the IBLA is very large and it would be impossible to obtain timely decisions through the current IBLA. The administrative law judges need to be located here in Alaska and allowed to focus on Alaska issues.

Senator MURKOWSKI. Thank you, Mr. Borell. Next let's go to Mr. Peter Van Tuyn, Trustees for Alaska. Good morning and welcome.

STATEMENT OF PETER VAN TUYN, TRUSTEES FOR ALASKA

Mr. VAN TUYN. Good morning. I thank the subcommittee and the Senator for inviting me here today. I focus my comments on S. 1466 and provide them on behalf of the full spectrum Alaska-based and national conservation organizations, some of which also asked me to introduce into the record their statements, if I may. This act is of great concern to the conservation community. While the announced goal of the act's proponents is to provide the prominent plan is a good one, the act goes beyond addressing just this issue.

S. 1466 is an extremely complicated and broad piece of legislation. Broader, in fact, than the public statement of its purpose. Its provision excludes the public from the newly established land conveyance process and goes well beyond existing land entitlements to provide new entitlements. Inexplicably, the act goes even further by providing nearly unfettered authority to the Secretary of the In-

terior to change land use on literally millions of acres of land in Alaska, all without public or judicial overview and without disclosure of potential environmental impacts or impacts on subsistence.

This massive piece of legislation, nearly 70 pages in length, was proceeded by little public discussion of the full range of problems it seeks to rectify. One reason for this is there has been little or no public discussion of the cause and scope of the current land transfer problem. Our first recommendation, therefore, is that this discussion occur in an open and public manner. Traditional vehicles exist to do this. One, we appreciate the opportunity here today to talk about it.

Another one, given the Department of the Interior is an obvious driver of this legislation, doing much of the leg work to prepare it, is to have an administrative analysis prepared by the Department of the Interior and use that as a vehicle for discussion. Furthermore, complex provisions of the act defy easy explanations and raise questions about the on-the-ground effect of them. For example, how many acres of land with CSUs are affected or potentially affected by this act? Where specifically are these lands located; in which parks, refuges and wilderness areas? How much will or could State entitlement increase under this act? How much will or could the Native regional corporation entitlements increase under this act? Could the Department of the Interior address the status or validity of R.S. 2477 rights-of-way under this act?

The answer to these and other fundamental questions are critical to an understanding of this act, and, therefore, it is critical that they be provided in a full and timely manner. All that said, what can be understood about S. 1466 is that it could affect public lands in Alaska in significant and damaging ways. While responding to the State's cry of, let my acres go, may be important, this act goes beyond that goal. For many of the Federal decisions it covers, it eliminates public and judicial review, sanctions ignorance of such decisions on the environment and subsistence, and significantly changes the land patterns, uses, and protective procedures that Congress deliberately established for certain areas.

I will touch on just a few provisions of the act to illustrate my point. Section 201 authorizes the Secretary to waive acreage limits on conveyances within refuges. Section 204 gives the Secretary discretion to waive pre-ANCSA refuge land selections.

Section 207 declares 255,000 acres to regional corporations' selective remaining entitlements under 14(h)(8), whereas, only last year, BLM, after extensive analysis, estimated it to be only 180 to 200,000.

Section 209, I find myself in agreement with Mr. Borell, perhaps for the first time. This has the authority for BLM to open and close lands without any public review, judicial review, and without opportunity for public comment.

Finally, section 213 appears only to be intended as momentum to ill-advised efforts to drill for oil in the Alaska National Wildlife Refuge.

In conclusion, S. 1466 proposes huge changes to existing laws, land entitlements, and land use policies. Please table this legislation and institute an open and public process to identify and rectify the legitimate barriers of land transfers. Thank you very much.

[The prepared statement of Mr. Van Tuyn follows:]

PREPARED STATEMENT OF PETER VAN TUYN, TRUSTEES FOR ALASKA

SUMMARY OF TESTIMONY

Thank you for the opportunity to present testimony before the Subcommittee on Public Lands and Forests on S. 1466, the Alaska Land Transfer Acceleration Act of 2003. This Act is of great concern to the conservation community, and, if passed, would likely result in the quick conversion of legitimately public resources to private ownership for little discernable public benefit.

While the announced goal of the Act's proponents to finally resolve land ownership questions in Alaska is a good one, the Act goes well beyond addressing just this issue. Indeed, the extent of the federal government's difficulties in resolving land ownership issues using existing mechanisms is not at all clear. Without this fundamental information on the problem, crafting a solution is premature. Consequently, the introduction of S. 1466 is premature.

S. 1466 is extremely complicated and broad in scope; broader in fact than the public statements of its purpose. Several of its provisions exclude the public from a newly established land conveyance process and go well beyond existing land entitlements to provide new entitlements. Inexplicably, the Act goes even further by providing nearly unfettered authority to the Secretary of the Interior to change land use on literally millions of acres of public lands in Alaska, all without public or judicial review, and without disclosure of environmental effects or impacts on subsistence.

Until questions concerning these fundamental issues are answered by the Act's proponents, we can take no position in support of legislation addressing the worthy goal of settling land ownership issues in Alaska. Instead, we must oppose the movement of S. 1466 through Committee and Congress. Once the problems with the current system are thoughtfully identified and evaluated, we can all turn to the task of crafting solutions to them. Whether these solutions occur in the administrative or legislative arena, the conservation community is committed to assisting all interested parties in crafting fair and equitable solutions, solutions which resolve in a timely manner land ownership issues and do so with the integrity that comes from a fair and open public process using historical land entitlements as the guide.

In this testimony, I first introduce myself, Trustees for Alaska, and the other organizations on whose behalf I submit this testimony. I then address the difficulty in evaluating a solution to a problem that has not clearly been identified. Third, I discuss the myriad of questions raised by S. 1466, questions which must be answered before next steps toward any solution can be taken. Finally, I review specific provisions of S. 1466 by way of illustrating significant problems with the Act, whether they be related to an evisceration of a public process, a seeming increase in land entitlement beyond that provided for in current law, an unwarranted and unreviewable change in land management policies, or which raise other concerns.*

INTRODUCTIONS

I provide this testimony as an attorney with over a decade of experience working on public land issues in Alaska. I work with Trustees for Alaska, which is a non-profit environmental public interest law firm. In this capacity, I have counseled and represented numerous Alaska-based and national conservation organizations, Native tribes, villages and other entities. On behalf of these clients, I have litigated numerous lawsuits concerning public land in Alaska. I have counseled and represented clients on state and federal administrative decisions authorizing activities on and transfers of public land in Alaska. This broad range of experience has made me familiar with legislation concerning public land in Alaska.

Trustees for Alaska itself was organized over a quarter century ago to provide counsel to protect and sustain Alaska's environment. Trustees has been involved in public land issues in Alaska since the approval and construction of the Trans-Alaska Pipeline System across federal and state lands. Indeed, there have been few significant environmentally-related public land issues in Alaska since Trustees' establishment on which Trustees has not been involved. I thus also bring to bear in this testimony Trustees' significant institutional knowledge of public land issues in Alaska.

Alaska Center for the Environment is a non-profit environmental advocacy and education organization dedicated to the conservation of Alaska's natural resources.

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*For their assistance in preparing this testimony, I would like to thank Pam Miller of Arctic Connections, Becca Bernard, Bob Randall, Shocky Greenberg, Tom Ofchus and Steve Higgs of Trustees for Alaska, and Chip Dennerlein.

Since 1971, it has worked to promote sound environmental policy and programs in the south-central Alaska area and statewide. Its mission is to protect Alaska's natural ecosystems and quality of life through grassroots activism and public education. With 8,000 dues-paying members from around the state, Alaska Center for the Environment works to build coalitions, educate the public, and promote citizen participation in government.

The Alaska Wilderness League supports legislative and administrative initiatives to defend and protect the Arctic National Wildlife Refuge, Alaska's forests, and other Wilderness-quality lands in Alaska. Since 1993, the Alaska Wilderness League has worked to promote national and local recognition of Alaska's environment through public education, and it has provided leadership within the environmental community on selected issues that concern Alaska.

The National Parks Conservation Association (NPCA) was founded in 1919. With more than 400,000 members, NPCA is America's only private, nonprofit citizen organization dedicated solely to protecting, preserving, and enhancing the National Park System in the United States.

The Natural Resources Defense Council (NRDC) uses law, science, and the support of more than 400,000 members nationwide to protect the planet's wildlife and wild places and to ensure a safe and healthy environment for all living things. NRDC's purpose is to safeguard the Earth: its people, its plants and animals and the natural systems on which all life depends. NRDC affirms the integral place of human beings in the environment.

The Northern Alaska Environmental Center promotes conservation of the environment in Interior and Arctic Alaska through advocacy, education, and sustainable resource stewardship. The Northern Center focuses primarily on habitat protection through environmentally-sound land management and allocation decisions. Top concerns include securing Wilderness designation for the Arctic National Wildlife Refuge, defending the wilderness qualities' of national parks and refuges, protecting wild rivers, and promoting sustainable multiple uses of the Alaska boreal forest.

The Sierra Club is America's oldest and largest grassroots environmental organization with 700,000 members working together to protect communities and the planet. The Alaska Chapter of the Sierra Club is the local grassroots arm of the national Sierra Club. The Alaska Chapter works to protect and restore the quality of the natural and human environment, and emphasizes wildlife protection and habitat conservation. Issues addressed by the Chapter include management of national parks, national wildlife refuges, and national forest wilderness, as well as offshore oil and gas exploration.

The Wilderness Society (TWS) is devoted to preserving wilderness and wildlife, protecting America's prime forests, parks, rivers, and shorelines, and fostering an American land ethic. With its nationwide membership and a staff of lawyers, scientists, economists, and policy experts, TWS plays a leading role in a variety of natural resource issues. TWS has as its primary focus in Alaska environmentally sound management of federal conservation areas and the proper implementation of the Alaska Lands Act.

THERE HAS BEEN LITTLE TO NO PUBLIC DISCUSSION OF THE CAUSE AND SCOPE OF THE CURRENT LAND TRANSFER PROBLEM

S. 1466 is a massive, complex piece of legislation. And yet there has been exceedingly little public discussion of the problems it seeks to solve or justification for the large breadth of the Act. Thus, it is hard to discern exactly what problems the legislation is intended to address or why it needs to be so broad in language and effect.

Senator Lisa Murkowski issued a press release when she introduced the legislation to the U.S. Senate. http://murkowski.senate.gov/Press%20Releases/7-28.html. (visited August 5, 2003) ("Press Release"). In the release she did provide some helpful, albeit brief, explanation of what the legislation is intended to accomplish. Senator Murkowski also explained her view that the federal government has been too slow in completing land transfers to those with land entitlements. Yet, the press release does not explain the difficulties the federal government has encountered in completing these exchanges in a timely manner, nor tie the provisions in the Act to a particular problem.

Notably, Senator Murkowski also appears to state that the Act is intended to address only land entitlements as they exist under current law. For example, Senator Murkowski stated that "[u]ntil we accelerate the conveyance to both the State and Native corporations, Alaskans can't efficiently manage their land holdings meaning Alaskans continue to be hampered in our efforts to develop Alaska to produce a meaningful economy for our citizens." Id. (emphasis added). Nowhere in the release does the Senator suggest that the standards in the current system, designed to pro-

tect both the public and the eventual landowner, are the cause of any problem. Yet, as described in more detail below, the Act appears to create significant new land entitlements and diminish, or even eliminate, some of these important standards.

The Department of the Interior's Bureau of Land Management (BLM) is the clear source of the Act. See "A New Approach To The Finalization Of The Alaska Land Transfer Program." (BLM Powerpoint Presentation dated March 19, 2003). BLM's justification for the Act should be helpful in understanding its provisions and effect. In BLM's presentation, BLM states that it has "developed a comprehensive strategic management plan for the completion of all Alaska land entitlements." (Id., Frame 2). Nowhere in the presentation does BLM suggest a new policy to either increase land entitlements or change the standards. Neither does it address the remarkable provision, discussed below, providing Interior sole and unreviewable authority to change land uses on literally millions of acres of land it manages in Alaska.

By June of this year, the Interior Department had crafted the proposed legislation which ultimately became S. 1466. Draft Legislation, Alaska Land Transfer Acceleration Act of 2003, Transmitted from the DOI to Senate Energy Committee June 5, 2003. It is obvious in reviewing this draft, as well as S. 1466 as ultimately introduced by Senator Murkowski, that its scope is expanded well beyond whatever purpose can be discerned from the public record.

In fact, while not yet used in this context, traditional vehicles exist to explore problems and assist in the development of solutions, and these should be used here as well. For example, Congress could hold oversight hearings to evaluate the current land conveyance program and identify difficulties in its implementation. A full slate of recommended solutions—administrative and legislative if necessary—could then be crafted.

Moreover, the Department of the Interior could prepare an administrative analysis of its land conveyance program, its difficulties in implementing the program, and its proposed solutions. Indeed, this analysis could conform quite readily to the process for such federal actions required under the National Environmental Policy Act, thus efficiently moving the issue forward to an expeditious resolution.

In fact, the reality that the Interior Department initially drafted the Act strongly counsels that it use the NEPA process for its continued involvement with the Act. Under NEPA, actions undertaken by federal agencies, including proposals for legislation, must undergo this process. 42 U.S.C. 4332(2)(C); *see generally, Flint Ridge Dev. Co.* v. *Scenic Rivers Assn.*, 426 U.S. 776, 785-88, 96 (1976). The NEPA process serves two purposes: "First, it should provide federal agencies with an environmental disclosure sufficiently detailed to aid in the decision whether to proceed with the project or program in light of its environmental consequences. Second, the statement will provide the public with information on the agencies' proposed action as well as encourage public participation in the development of that information." *State of Alaska* v. *Carter*, 462 F.Supp. 1155, 1159 (D. Alaska, 1978); see also Comment, *Impact Statements on Legislative Proposals: Enforcing the Neglected Half of NEPA's Mandate*, 7 Envtl. L. Rep. 10145 (1977).

The White House's Council on Environmental Quality (CEQ) developed regulations on the implementation of NEPA to which the Courts grant substantial deference. See *Andrus* v. *Sierra Club*, 99 S.Ct. 2335, 2341 (1979). These regulations define legislation developed by an agency as:

> A bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency. . . . The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation.

40 C.F.R. § 1508.17; see *State of North Dakota* v. *Andrus*, 483 F.Supp. 255, 260 (D.N.D. 1980) ("significant cooperation" test satisfied when federal agency did "leg work" for legislative proposal).

The Interior Department's work on S. 1466 would thus seem to fit squarely within these rules.

A senator could also request that the Congressional Research Service (CRS) review and summarize the proposed legislation as currently drafted. Reports from CRS historically provide common sense interpretations of legislative issues and thus likely would shed light on the many questions surrounding S. 1466.

Finally, to the extent that Senator Murkowski intends the Act to resolve land ownership issues in order "to produce, a meaningful economy for our citizens," Press Release at 1, the facts do not appear to support the reality of that goal. As was discussed in the *Anchorage Daily News* just yesterday.

> There is no evidence that increasing the supply of private land will stimulate Alaska's economy. Montana, North and South Dakota, and Wyoming all share

the dubious distinction of having lots of private land per capita but chronically anemic economies. Much as rain does not follow the plow, money does not grow in wide-open spaces.

Meiklejohn, No Shortage Of Private Land Here, Compass Piece, Anchorage Daily News (Page B-4, August 5, 2003). Notably, Alaska has more private land per person than any other state in the nation, with "more than 70 acres for every one of [its] 650,000 residents." Id.; see also Hull, Leask, Dividing Alaska, Institute of Social and Economic Research, UAA, www.iser.uaa.alaska.edu/landswebfiles/lands.pdf (visited August 5, 2003).

THE SCOPE AND EFFECT OF S. 1466 IS UNCLEAR

The complicated provisions of the Act defy easy explanation and raise questions which the Act's proponents should answer before this Act moves any further. The following are some, and yet by no means all, of these questions:

How long has this proposed legislation been under consideration by Department of the Interior officials?

What study has been undertaken to determine the specific steps needed to achieve the stated purposes of the act, to "accelerate" fulfillment of conveyances under the Alaska Statehood Act and the Alaska Native Claims Settlement Act (ANCSA)?

What information about specific problems with land conveyances and difficulties in resolving disputes was provided by the DOI or its agencies that was considered in the drafting of this Act?

What information was provided by Senator Murkowski and/or Senator Stevens that was used by the Department when it drafted the initial bill?

What information has been provided to Senators Stevens or Murkowski regarding problems with land conveyances, including any such information for lands within the external boundaries of Conservation System Units (CSUs)? Act?

How many acres of land within CSUs are affected or potentially affected by this?

Where specifically are these lands located (e.g. in which Parks, Refuges, Wilderness areas)?

Are there any ongoing land or boundary disputes between the State of Alaska and the United States concerning land within or near a National Wildlife Refuge, National Park or other CSU?

How much will or could the State entitlement increase under this Act?

How much will or could the Native regional corporation entitlement increase under this Act?

How much will or could the Native village corporation entitlement increase under this Act?

Could new land exchanges be considered during the negotiations authorized by the Act?

Would new land exchanges need congressional approval if this Act is passed into law?

Could the Department of the Interior address the status or validity of R.S. 2477 rights of way under this Act?

Could the Department of the Interior resolve submerged land status or claims for navigable waters under this Act?

On what lands for which the federal government currently retains a reversionary interest may the State file selections under this Act?

On what lands may the University of Alaska file selections to fulfill its remaining entitlement under this Act?

How much land may he converted to state land by the relinquishment of federal mining claims and conversion to state claims under this Act, and how much of this land would be charged against the State's entitlement?

What is the overall cost of this Act to the United States?

WHAT CAN BE UNDERSTOOD ABOUT S. 1466 IS THAT IT COULD AFFECT PUBLIC LANDS IN ALASKA IN SIGNIFICANT AND DAMAGING WAYS

As discussed above, we do not nearly have sufficient information to fully understand the purposes or implications of this complex Act. Nevertheless, serious problems with portions of the Act are beginning to emerge. While improving the land transfer process to achieve final resolution of land ownership issues is in everyone's interest, this Act goes well beyond that goal. For many of the federal decisions it covers, it eliminates public and judicial review, sanctions ignorance of the impacts. of such decisions on the environment or subsistence, and significantly changes the land patterns, uses, and protective procedures that Congress deliberately established for certain areas.

Provisions illustrating these points are discussed below. While we certainly oppose these provisions, this discussion does not represent the sum total of our concerns. Indeed, our views are certain to evolve as more information on S. 1466 is revealed, the many questions are answered, and as we continue to analyze the Act.

Section 106

This section authorizes the Secretary to negotiate an agreement with the State concerning any aspect of its remaining land entitlement. The issues that can be negotiated include, but do not seem to be limited to, the exact number and location of acres remaining to be conveyed to the State under its Alaska Statehood Act and University Lands Act entitlements; the priority of conveyances; relinquishment of selections that will not be conveyed; and the survey of exterior boundaries. This section, in effect, takes the completion of the State's land entitlement—including the exact number of acres left to be conveyed—out of the regular administrative process and subjects it to informal negotiations between the Federal and State governments. There is nothing in this provision or in any part of the Act that requires public involvement in these negotiated decisions, so the public could be left entirely in the dark as to the procedure to be used, the standards to be applied or the result to be reached.

There may be some logic in allowing negotiations and agreements to finally resolve entitlement issues, but not if the process excludes public participation and other safeguards to rational decisionmaking. It is a mistake of historic proportions to give the Secretary unfettered discretion to informally resolve important questions of land transfer and entitlement. Indeed, laws such as the Administrative Procedures Act were put in place by Congress in direct reaction to the kind of arbitrary and capricious decisionmaking that can occur under provisions such as this. It is also unclear whether the negotiation authority in this provision is bounded by the restrictions that otherwise apply to State selections and conveyances under the Statehood Act, ANCSA, Alaska National Interest Lands Conservation Act (ANILCA), and other laws, such as limitations on conveyance of lands within CSUs.

Section 107

This section provides an easier process by which federal mining claimants can relinquish their claims and convert them to State claims so that the encumbered land may be conveyed to the State. It is entirely unclear that this provision is in the public interest. There are many differences between federal and state regulation of mining, and the cumulative effect of these differences may be that federal mining claims will be subject to less-stringent environmental regulation if they are converted to state claims.

This section also provides that where the converted federal claims are surrounded by State lands, the lands encumbered by the formerly federal claims maybe conveyed to the State without charge to the State's entitlement. This could result in the State receiving title to thousands more acres than it is entitled to under the Statehood Act and other laws. There is no reason to expand, or create new, entitlements, and it is especially inappropriate to include such a provision in a bill the announced intent of which is to bring closure to State and Native land entitlements and conveyances.

Section 108

This section allows for the conveyance to the State of lands mistakenly omitted or relinquished from existing selections. if the State can satisfy the Secretary that a mistake was made. This provision lacks any standards to guide the Secretary's determination of such an allegedly mistaken omission or relinquishment and therefore poses the risk that erroneous determinations will be made.

Section 201

This section allows for conveyance of lands within a Village corporation's township selections that have only recently become available, because it authorizes the Secretary to waive the 69,120-acre limit on conveyances of land within national wildlife refuges. The 69,120-acre limit is part of the complex congressional compromise embodied in ANCSA. This limit provides protection against the proliferation of private inholdings within national wildlife refuges.

Section 203

This section provides that when a Native corporation's entitlement will be satisfied by conveyance of the next prioritized section of 640 acres, the Secretary and the corporation can agree that conveyance of that section will complete the corporation's entitlement. While this may be an easier way than under current law to bring closure to a particular corporation's entitlement, it also means that each Native cor-

poration with some remaining entitlement could receive as much as 640 acres more than what it is entitled to under ANCSA. Once again, we see no reason for existing entitlements to be expanded, especially in a bill that purportedly is intended to bring closure to the existing land conveyance process.

Section 204

This section gives the Secretary discretion to waive the existing prohibition on conveyance to the regional corporations of subsurface rights inside pre-ANCSA national wildlife refuges. That prohibition was, once again, part of the carefully crafted compromise of ANCSA. and there is no justification for altering that compromise now.

Section 207

The purpose of this provision is to bring some closure to the Native corporations' entitlement under Section 14(h)(8) of ANCSA, which creates a pool of two million acres of land to be allocated among the regional corporations based on population. The section declares that 255,000 acres is the regional corporations' collective entitlement. While we are sympathetic with the need to find a way to satisfy the corporations' 14(h)(8) entitlement, we object to the Act's overly-generous acreage figure of 255,000 acres. The BLM's most recent estimate of the remaining 14(h)(8) entitlement was 180,000-200,000 acres. Again, there is no reason for this bill to expand the corporations' existing entitlement, especially when some of the land may be conveyed from CSUs.

Section 209

While it has stiff competition for the title, Section 209 is perhaps the most egregious and non-germane provision in this Act. It effectively exempts most BLM lands in Alaska from the Federal Land Policy & Management Act rules for land use planning. It does this by authorizing the Secretary to open or close BLM lands withdrawn under Section 17(d)(1) of ANCSA to any form of appropriation or use under the public land laws without environmental or judicial review and without an opportunity for public comment. This would apply to the majority of the millions upon millions of acres managed by BLM in Alaska. This section is simply astounding in its elimination of such important safeguards on the federal government's management of millions of acres of our public lands.

Section 212

This section allows the Secretary to negotiate agreements with Native corporations on any aspect of their remaining entitlement. The issues covered by such agreements could include amount and location of their remaining entitlement; priority of conveyances; relinquishment of selections that won't be conveyed; selection entitlement to which selections are to be charged regardless of the entitlement under which originally selected; survey of exterior boundaries and the additional survey to be done under Section 14(c) of ANCSA; and resolution of conflicts with Native allotment applications. This provisions uses the same structure as that used in Section 106, and our comments on that section are thus generally applicable here as well.

Section 213

This section authorizes the conveyance to Kaktovik Inupiat Corporation of an uncertain number of acres within the coastal plain of the Arctic National Wildlife Refuge, and to Arctic Slope Regional Corporation of an unidentified number or location of acres of subsurface rights within the same. This provision is not justified bylaw or equity, and can only be intended to add momentum to the ill-advised effort to drill for oil on the coastal plain of the Arctic Refuge.

Sections 401 and 402

These sections provide for development of regional and Village plans for completing land conveyancing by the year 2009. While we support in concept the notion of planning, these sections lack provisions for public participation.

Section 501

This section authorizes the creation of an entirely new appeals and hearing process to take the place of the Interior Board of Land Appeals where Alaska land entitlement and conveyance issues are involved. It also authorizes the Secretary to publish regulations establishing rules for the appeal and hearing process without first taking public comment on draft regulations as is usual under the Administrative Procedure Act. We believe it would be inefficient and not cost-effective to create an entirely new appeals board and procedural rules, and such rules should not be promulgated without public participation.

CONCLUSION

While S. 1466 masquerades as a ministerial bill to expedite existing land entitlements in Alaska, in reality it proposes huge changes to existing laws, land entitlements and land use policies. Indeed, it seems designed to expeditiously appropriate public resources for private gain without any apparent public benefit.

As an initial matter, proponents of these measures, whether they are in Congress or administrative agencies, should evaluate issues of this magnitude through a thorough and transparent public process before legislation is introduced to Congress. While it is not too late to initiate such a process, it certainly has not happened in this case.

Additionally, the Act's proponents have presented no clear statement of a problem that justifies the massive scope of this Act. Proponents have also not disclosed the effects that such broad legislation will have on public lands in Alaska, information that should be available as a starting point for a discussion on proposed congressional action of this magnitude.

Alarmingly, the Act increases non-federal land entitlements and allows for a change in land use authorities for literally millions of acres of public lands. And, remarkably, it limits or completely excludes the public from land conveyance and land use decisions, and insulates many of the decisions from review by the independent judiciary. As history has shown, providing such vast discretion to administrative agencies leads to arbitrary and capricious deeisionmaking, and harms the very benchmarks of democracy in the process. Such provisions run afoul of basic public trust principles.

In accelerating the transfer of lands the federal government must take care not to make changes in fundamental policies and processes that were adopted in the context of The Statehood Act, ANCSA, ANILCA and other laws regarding Alaska's public lands. As currently presented, S. 1400 crushes under the weight of unrelated and unjustified provisions the kernel of truth that land transfer in Alaska has faced challenges which could benefit from increased attention by all interested parties. The Act's proponents should recognize this and initiate an inclusive and transparent process to identify and craft solutions for the legitimate issues that face the federal government and. all Alaskans in expeditiously concluding complex and far-reaching land ownership issues. Should this occur, the conservation community undoubtedly will stand shoulder-to-shoulder with other Alaskans and Americans to resolve this issue.

Senator MURKOWSKI. Thank you. I appreciate it. Just for the record, you indicated that you had testimony from other individuals or groups, and those will be submitted into the record, as with any other written statement. So we appreciate you bringing those today.

Mr. VAN TUYN. Thank you, Senator.

Senator MURKOWSKI. Next let's go to Mr. Bruce Borup, CEO of Cape Fox Corporation.

STATEMENT OF BRUCE BORUP, CEO, CAPE FOX CORPORATION

Mr. BORUP. Thank you for the opportunity to testify. In your introduction to this legislation, you succinctly described some of the issues facing Cape Fox: The 6-mile exclusion, the inability to select land within the Annette Indian reservation, and other Federal and ocean reserves.

The bottom line is no other community or village corporation in the State has had so much land denied from the original mandated selection rights as Cape Fox. Let me describe what that means to the community members. The village of Saxman has 431 residents. The unemployment rate in Saxman is 256 percent, almost 420 percent of the State unemployment rate. Economic development and job creation is critical to the survival of this village. Even a handful of new jobs can create an enormous impact on this community. Tourism is driving economic development at the moment in Ketch-

ikan, and we are creating jobs, but those are low-paying jobs, many of them minimum wage.

Development of the Kensington gold project will bring significant economic benefits to southeastern Alaska. The project will add 225 direct high-paying job at a payroll cost of $16 million. It will also create up to an additional 180 indirect jobs and add an additional tax base to the region. This project is projected to last 15 years, including construction, startup and reclamation periods. Construction alone would inject an estimated $150 million into the economy. To date, Coeur has invested over $22 million at the site on environmental baseline studies, permitting, and environmental impact statements. The Coeur d'Alene Mines Corporation is an environmentally-responsible operator, having been acknowledged by 19 national and international environmental awards since 1987. Coeur is strongly committed to sound resource development and economic diversity in the State of Alaska.

Cape Fox Corporation also has a long-established reputation for private lands management and has always worked with public agencies to provide access when it makes sense. Cape Fox works closely with the U.S. Forest Service, the U.S. Fish and Wildlife, Corps of Engineers, the State Department of Fish and Game as well as many other agencies to ensure that all lands are managed safely and responsibly. In fact, our board of directors of Cape Fox Corporation recently designated its White River area as a Cape Fox Rain Forest Reserve and is developing a private lands management plan for the enhancement of wildlife within that area.

The lands to be exchanged do not include any land within Berners Bay LUD II area, which is an important recreational area for local residents. Concerns about massive clear cutting near Berners Bay are totally unfounded. There is little timber on the land to exchanged that has commercial value, and Cape Fox has no plans to log in this area. Cape Fox is just doing our part to enhance the economic development and creation of jobs in southeast Alaska so that wage-earners can support their families.

Additionally, our work in the Cape Fox Rain Forest Preserve, which is in part being modeled after the Dye Creek Preserve in Redding, California, owned by the Nature Conservancy, would itself serve as a future model for similar wildlife preserves for this area. In fact, Cape Fox intends to utilize the same model and access the same wildlife restoration resources that the major conservation agencies represented today have utilized for decades in the Lower 49 States to restore and conserve wildlife properties they control.

Thank you for the opportunity to speak today.

[The prepared statement of Mr. Borup follows:]

PREPARED STATEMENT OF BRUCE BORUP, CEO, CAPE FOX CORPORATION

INTRODUCTION

Cape Fox Corporation is the ANSCA Corporation for the Native Village of Saxman, near Ketchikan, Alaska. As with other ANCSA village corporations in Southeast Alaska, Cape Fox was limited to selecting 23,040 acres under Section 16 of ANSCA. However, unlike other village corporations, Cape Fox was further restricted from selecting lands within six miles of the boundary of the home rule City of Ketchikan. The City of Ketchikan is the fourth largest city in the state and the second largest in southeast. Ketchikan is the single largest city to impact any of the

200 village corporations created by ANCSA. In addition, Ketchikan has the highest percentage of ocean and federal reserves of any ANCSA village in the state, further limiting the opportunity to secure an equitable ANCSA settlement. No other community or village corporation in the state has had so much land denied from their original mandated selection rights. All other ANCSA corporations were restricted from selecting within two miles of such a home rule or city.

The six mile restriction went beyond protecting Ketchikan's watershed and damaged Cape Fox by preventing the corporation from selecting valuable timber lands, industrial sites, and other commercial property, not only in its core township but in surrounding lands far removed from Ketchikan and its watershed. As a result of this restriction, only the mountainous northeast corner of Cape Fox's core township, which is of no economic value, was available for selection by the corporation. Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

ECONOMIC DEVELOPMENT

The village of Saxman has 431 residents. The unemployment rate in Saxman is 25.6%, almost 420% of the State unemployment rate. Economic development and job creation is critical to the survival of families in this village. Even a handful of new jobs can create an enormous impact on this community.

Coeur Alaska Inc is headquartered in Juneau and owns patented lands and mining leases that encompass the Kensington and Jualin mine sites in the Tongass National Forest, 45 miles north of Juneau. Gold was first discovered in this area in 1886. These mines operated in various stages until 1935. Since 1987, Coeur has made significant investments to reopen and operate the Kensington Mine, using modern technology to recover its remaining gold ore.

The lands to be exchanged surround Coeur's patented lands and are heavily encumbered by 12,792 acres of unpatented mining claims. According to the Tongass Land and Resource Management Plan, the National Forest lands encompassing these unpatented claims are zoned for mining development. Transfer of these lands to Cape Fox and Sealaska will not affect the mining claim rights or represent a deviation from the Tongass Management Plan. Rather, the transfer will eliminate complicated claim and patented land boundaries, saving the public considerable administrative costs.

Development of the Kensington Gold Project will bring significant economic benefits to Southeastern Alaska. The project will add 225 direct high paying jobs at a payroll cost of $16 million, create up to an additional 180 indirect jobs, and add an additional tax base to the region. This project is projected to last 15 years, including construction, startup and reclamation periods. Construction alone would inject an estimated $150 million into the economy. To date, Coeur has invested over $22 million at the site on environmental baseline studies, permitting and environmental impact studies. Although the project has previously received all its major environmental permits, Coeur is presently working closely with public agencies on the preparation of a second SEIS to support the permits required to reopen and operate the mine.

The Coeur d' Alene Mines Corporation is an environmentally responsible operator, having been acknowledged by 19 major national and international environmental awards since 1987. Coeur is strongly committed to sound resource development, and economic diversity in Southeast Alaska and is required to provide financial assurances for all reclamation requirements. Cape Fox Corporation also has a long established reputation for responsible private lands management and has always worked with public agencies to provide access when it made sense. Cape Fox works closely with the U.S. Forest Service, U.S. Fish & Wildlife, the Corps of Engineers and the State Department of Fish & Game as well as many other agencies to ensure that our lands are managed safely and responsibly. In fact, the Board of Directors of the Cape Fox Corporation recently designated its White River area as the "Cape Fox Rainforest Preserve" and is developing a private lands management plan for the enhancement of wildlife within that area.

The lands to be exchanged do not include any land within the Berners Bay LUD 11 area, which is an important recreational area for local residents. Concerns about massive clearcutting near Berners Bay are totally unfounded. There is little timber on the land to be exchanged that has commercial value, and Cape Fox has no plans to log in this area. Cape Fox is focusing on doing our part to enhance the economic development and creation of jobs in Southeast Alaska. Additionally, our work in the Cape Fox Rainforest Preserve, which in part is being modeled after the Dye Creek

Preserve in Redding, California, owned by The Nature Conservancy, would itself serve as a future model for a similar wildlife preserve for this area. In fact, Cape Fox intends to utilize the same model and access the same wildlife restoration resources that the major conservation agencies represented here today have utilized for decades in the Lower 49 states to restore and conserve wildlife properties they control.

Thank you for the opportunity to speak with you today.

Senator MURKOWSKI. Thank you, Mr. Borup. I appreciate you coming this morning. Next let's go to Mrs. Rosa Miller, tribal leader of the Auk Kwaan. Mrs. Miller.

STATEMENT OF ROSA MILLER, TRIBAL LEADER OF THE AUK KWAAN

Mrs. MILLER. Thank you. Good morning. My name is Rosa Miller. I'm the tribal leader of the Auk Kwaan, the original settlers in Juneau. Traditional Auk territory extended from Berners Bay to Seymour Canal. I would like to thank Chairman Craig and the members of the subcommittee for inviting me to testify today. While Anchorage is much closer to Juneau than Washington, D.C., is, it is still over one thousand miles away from Juneau.

This is a very long and difficult trip for me. I respectfully request the subcommittee hold another hearing in Juneau on this bill and learn about Berners Bay and its importance to the Auk Kwaan and the other residents of Juneau. I respectfully submit the following statement into the official record of the subcommittee hearing on behalf of myself and the other members of my tribe.

On behalf of the Auk Kwaan, I wish to strongly object to S. 1354, the Cape Fox Land Entitlement Adjustment Act of 2003. This bill gives Cape Fox and Sealaska Corporation public lands near Slate Lake in the Berners Bay watershed, our ancestral land. This is the very same area where Coeur Alaska hopes to make money by dumping its mine tailings. Today, I want to explain how important these ancestral lands are to the Auk Kwaan. We used to have several villages in Berners Bay, and where there were villages were burial sites. We're afraid that development of these lands will decimate our burial sites. There has been enough of such desecration. When is it going to stop? There is also a mountain located at Berners Bay, Spirit Mountain, also know as Lionshead Mountain, which is sacred to us because our Shaman spirits dwell in it. Many times I have told stories about our ancestors who are buried here.

Spirit Mountain is a place that is important to the Tlingit of the past, the present, and the future. S. 1354 proposes to give away our ancestral lands to both Sealaska and Cape Fox Corporation. In the old days, when you traveled to someone else's territory, you could not land your canoe until you had permission from the clan who lived in the area. We have heard absolutely nothing from either corporation about their intentions for our lands in Berners Bay. We fear that the relentless drive for corporate profits will override culture, tradition, and the protection of sacred grounds. Berners Bay is also very important as an increasingly vital source of traditional foods and herbal medicine.

Over the years, as Juneau has grown, we have needed to travel further and further to find our traditional foods, such as berries, wild asparagus, as well as herbal medicines. These foods and medicines remain in abundance in Berners Bay today. Each year that

passes increases the importance of Berners Bay as a source for these traditional foods and medicines.

When I learned that this bill would be considered at this hearing in Anchorage, I wrote Senator Lisa Murkowski and requested that a hearing be held in Juneau on this bill. After all, it's not Anchorage's sacred and recreational lands that will be given away to corporate interests if this bill goes through. I pray that you, as our leaders, will be fair to the people whose lives will be directly affected by the passage of this selection. Please do not rush this bill.

We feel that each of you, especially Senator Murkowski, must come to Juneau to learn about Berners Bay and the importance to the Auk Kwaan and the other residents of Juneau. On behalf of the Auk Kwaan, I implore you: Please do not give away our land. It is the only thing we have left. We know that you have a heart to do what is morally and ethically right and withdraw this harmful bill. With your permission, I also wish to submit the following testimony prepared by the Southeast Alaska Conservation Council on this bill into the official record for this field hearing. Thank you for the opportunity to share our concerns with this bill with you.

[The prepared statement of Mrs. Miller follows:]

PREPARED STATEMENT OF ROSA MILLER, TRIBAL LEADER OF THE AUK KWAAN

My name is Rosa Miller, and I am the Tribal Leader of the Auk Kwaan, the original settlers of the Juneau area. Traditional Auk territory extended from Berners Bay to Seymour Canal. I would like to thank Chairman Craig and the members of the- Subcommittee for inviting me to testify today. While Anchorage is much closer to Juneau than Washington D.C., it is still over 1,000 miles away from Juneau. I respectfully request the Subcommittee to hold another hearing in Juneau on this bill and learn about Berners Bay, our ancestral lands, and its importance to the Auk Kwaan and the other residents of Juneau.

The following statement is submitted on behalf of myself, and the other members of my tribe. I respectfully request that this written statement and accompanying materials be entered into the official record of this Subcommittee hearing.

On behalf of the all the members of the Auk Kwaan, I wish to express our strong objection to Senate Bill 1354, the Cape Fox Land Entitlement Adjustment Act of 2003. This bill allows the Cape Fox Corporation to exchange private timberlands near Ketchikan for public lands near Slate Lakes, in the Berners Bay watershed. It also allows Sealaska Corporation to exchange subsurface rights to several thousand acres for lands alongside those given to Cape Fox in Berners Bay. This is the very same area where Coeur Alaska, operator of the Kensington Gold Project, hopes to make money by dumping its mine tailings.

Today, I want to explain how important these ancestral lands are to the Auk Kwaan. We used to have several villages near Berners Bay; and where there were villages, there are burial sites. We are afraid that the development of these lands will result in the desecration of our burial sites. There has been enough of such desecration; when is it going to stop!

There is a also a mountain located at Berners Bay, Spirit Mountain (also known as Lionshead Mountain), which is sacred to us because all our Shaman spirits dwell in it. Many times I have told stories about our ancestors who are buried here. Spirit Mountain is a place that is important to the Tlingit of the past, the Tlingit of the present, and the Tlingit of the future.

Over the years, as Juneau has grown, we have needed to travel farther and farther to find our traditional foods, such as berries and wild asparagus, as well as herbal medicines. These foods and medicines remain abundant in Berners Bay. As each year passes, the importance of the resources in Berners Bay increases as we depend on them more and more.

Senate Bill 1354 proposes to give away our ancestral lands to both the Sealaska and Cape Fox Corporations. In the old days, when you traveled to someone else's territory, you could not land your canoe until you got permission from the clan who lived in the area. We've heard absolutely nothing from either corporation about their intentions for our lands in Berners Bay. We are afraid that the development of these lands will desecrate our burial sites. We fear that the relentless drive for cor-

porate profits will override culture, tradition, and the protection of sacred grounds. This fear is based on the history of over thirty years of land development activities by Sealaska, Cape Fox, and other Native village corporations in Southeast Alaska. For your information, I am submitting for the record *A Clearcut Legacy*, a two-part series that appeared in the Anchorage Daily News in February, 2001 (Exhibit 1).*

When I learned that this bill would be considered at this hearing in Anchorage, I wrote Senator Lisa Murkowski and requested that a hearing be held in Juneau on this bill. After all, it is not Anchorage's sacred and recreational lands that will be given away to corporate interests if this bill goes through. Attached to this testimony (Exhibit 2) is a copy of the letter I wrote Senator Lisa Murkowski, with copies of the letters 1, had previously written her father, now-Governor Frank Murkowski, when he was Senator.

In closing, I pray that you, as our leaders, will be fair to the people whose lives are most directly affected by passage of this legislation. Please do not rush this bill. We urge you to come to Juneau to learn about Berners Bay and its importance to the Auk Kwaan and the residents of Juneau.

On behalf of the Auk Kwaan, I implore you, PLEASE DO NOT GIVE AWAY OUR LAND. It is the only thing we have left. We hope that you will have the heart to do what is morally and ethically right and withdraw this harmful bill now.

Senator MURKOWSKI. Thank you, Mrs. Miller. Also, that additional testimony will be included in the record. Thank you for bringing it.

And the last panelist, Mr. Tim Verrett, borough attorney from the Bristol Bay Borough in Naknek. Good morning and welcome.

STATEMENT OF TIMOTHY C. VERRETT, BOROUGH ATTORNEY, BRISTOL BAY BOROUGH

Mr. VERRETT. Good morning, Senator, and thank you for allowing me the opportunity to testify before this field hearing.

I'm here to simply testify regarding S. 1421, the authority to allow Native allottees the ability to subdivide their allotments. You correctly stated that currently both the allottee lacks the authority to subdivide and BIA lacks authority to approve dedication of public ways and utility easements within subdivisions. This lack of authority has created significant hardships on allottees by placing under a cloud current subdivisions that have been approved. That effects not only the allottees, but also non-Native purchasers of lots in the subdivision. And it also hampers allottees who wish to subdivide their allotments.

The borough supports legislation which would allow allottees to subdivide their property. I think it's fair to say that the authority to allow an allottee to subdivide their parcel is fairly noncontroversial. However, I would suggest that currently S. 1421 has some provisions which are controversial.

The issue of a lack of authority of Alaska Natives to subdivide their allotments first arose in Bristol Bay Borough. We have essentially been on the point of the spear on this issue. I have participated personally in a number of meetings to assist in resolving this issue. I have reviewed four separate drafts of the legislation, in addition to S. 1421. There has been significant dialogue and debate regarding the language of draft legislation. It is the Borough's position that only section S. 1421 is necessary to resolve this issue. This is a fairly simple real estate issue. It requires a relatively simple fix that will allow the Alaska Natives to subdivide their allotments, enjoy the economic benefits of their land, and assist the citizens, not only of the borough, but of the State of Alaska.

*The exhibits have been retained in subcommittee files.

That's really all the comments I have. Thank you.
[The prepared statement of Mr. Verrett follows:]

PREPARED STATEMENT OF TIMOTHY C. VERRETT, BOROUGH ATTORNEY, BRISTOL BAY BOROUGH

Mr. Chairman and subcommittee members, my name is Timothy C. Verrett and I am the Borough attorney for the Bristol Bay Borough. I submit this testimony on behalf of the Bristol Bay Borough.

Up until October 2000, the Bureau of Indian Affairs, pursuant to its trust responsibilities, approved Alaska Natives subdividing their allotments and dedicating rights-of-ways and utility easements. The BIA estimates there are 206 such subdivisions of which approximately 21 are within the Bristol Bay Borough. Lots were sold within the subdivisions to both Native and Non-Native purchasers. One must assume that the purchasers relied upon the subdivision plats, which were recorded in the various recording districts throughout the State of Alaska. All that changed when a Department of the Interior solicitor issued an opinion that the BIA lacked the legal authority to execute subdivision plats dedicating public rights-of-ways and utility easements.

One must remember that the subdivision plats were created and recorded to comply with either the State of Alaska or local platting authority requirements for subdivisions. One must assume that the allotee elected to subdivide his/her allotment to maximize the economic benefit of the allotment. For the last 2½ years, the State of Alaska and local governments have tried to resolve the issue of dedication with the BIA. BIA's position has been that local governments and the State of Alaska could apply for easements for public ways under one of two federal regulations. Both regulations impose significant legal burdens upon the applicant as a condition of statutory authority to approve the application. The Bristol Bay Borough, and I believe it is safe to say other governmental entities, have been unwilling to undertake the additional legal burden of applying for and accepting easements for public ways in subdivisions. It is an unreasonable and unnecessary burden placed upon local governments and the State of Alaska. The Bristol Bay Borough has declined to review new preliminary subdivision plats of an allotment as such preliminary plat could not provide legal access to the subdivision lots and failed to comply with the requirements of the Bristol Bay Borough platting code and the platting statutes of the State of Alaska.

Local governments in general, and the Bristol Bay Borough in particular, have expended significant local resources over the last 2½ years attempting to resolve a problem which the Bristol Bay Borough neither created nor wanted. This is an unreasonable economic burden to place upon local government. The Bristol Bay Borough, in particular, and I assume other small municipal governments, cannot and will not continue to expend its very limited local resources to resolve this problem.

This is a simple real estate problem. The solicitor who initially issued the opinion that BIA lacked authority to approve dedicated public ways and utilities, drafted legislation which would solve the real estate issue. That proposed legislation is attached as exhibit 1.* Unfortunately, through many months of discussion, the resolution of a simple real estate problem has spawned draft legislation which now number 6 pages. There are those who wish to use this real estate issue as a soap box to promote their individual or personal agendas. We have groups who wish to use the legislation to advance native sovereignty. We have groups who wish to use the legislation to advance state's rights. These agendas are only harming the residents of the Bristol Bay Borough, both native and non-native alike. The Bristol Bay Borough is simply interested in solving a simple real estate problem so that its residents can subdivide their allotments in compliance with the Bristol Bay Borough Code and State Statutes and enjoy the economic benefits of their allotments.

The inability of an allottee to subdivide his/her allotment in compliance with local platting ordinances and/or the state statutes, places a significant burden upon the allottee. One must assume that the allottee elects to subdivide his/her allotment to maximize the economic value of that parcel of property. The inability to subdivide the allotment in compliance with state statute or local platting ordinances has the direct effect of diminishing the ultimate economic value of the allotment. If an allottee should subdivide his/her property without complying with state statutes or local platting ordinances, which has been suggested by BIA as an alternative, the economic realities are that the allottee will not fully recognize the value of the allotment. There is a significant probability that title insurers will not issue a title policy

*The exhibit has been retained in subcommittee files.

without exception. Likewise, financing of the purchase of lots within a allotment subdivision will most probably be unavailable. Prospective purchasers and lenders will not undertake the risk that they will not have legal access to the lots within an allotment subdivision. The potential purchaser will either choose not to purchase the lot or significantly reduce the amount it offers an allottee. Likewise, public utilities will not extend utility services to and within a subdivision of a native allotment because it will not acquire the easements and/or right-of-ways necessary to extend those utilities. The lack of utilities would significantly reduce the overall value of a subdivision lot within a native allotment subdivision.

There has been a hue and cry from local allottees that have been unable to subdivide their allotments. These allottees appear to blame local government for their inability to subdivide their parcels. Local government and the State of Alaska have an obligation to enforce their own statutes and/or ordinances. This includes platting statutes which require legal access and utility easements to subdivisions. Local governments have expended significant local public resources to assist its allottee citizens in finding a solution to this real estate problem. This has placed a significant economic burden upon local government and the State of Alaska. This economic burden should be reimbursed by any legislation which provides legal authority to subdivide native allotments.

Thank you.

Senator MURKOWSKI. Thank you. I appreciate your testimony.

Now, if we may go back in the same order in the which we started, some questions first to you, Mr. Angapak. What would you say is the most important issue for the Alaska Federation of Natives concerning this land transfer act that we're proposing?

Mr. ANGAPAK. I don't know that I can characterize it as being the most important issue. However, one of the major concerns that we have with this bill, and I think it's correctable, is the issue of prioritization of selected land. Some of the regional corporations, such as Ahtna, their land selections are totally surrounded by St. Elias National Park Service.

This legislation mandates that regional corporations reduce their over-selections to a finite limit. And that—therein lies a problem. The ANSCA's corporations necessarily selected their lands for the resource potential allocated within the lands that they selected. In order to reduce their priority—their over-selection, regional corporations necessarily need to do some resource—additional resource inventory on those selections.

So we feel that the regional corporations must be given an opportunity to have access to their selected lands, if, in fact, they are going to be forced to reduce their over selection to a finite limit. Short of that, perhaps those regional corporations whose land selections are located within National Park Services and that type of thing could be exempt of the terms and conditions of this bill.

Senator MURKOWSKI. In your testimony, you mentioned concerns with the title 3, and you commented how this legislation would remove certain protections that are currently provided to owners of Native allotments. Can you give me some additional examples, or go a little bit further in your explanation there?

Mr. ANGAPAK. Yes, ma'am. We do not question the right of Congress to carry out their constitutional right to legislate on behalf the American Indian and Alaska Natives; however, in a court case called *Seminole National* v. *The United States*, the court ruled that Congress must act with good faith and not through loyalty for the best interests of the Indian. Pursuant—in reviewing this bill, there are certain existing rights that are being eliminated by this bill. For example, applicants now have the right to amend a description of their allotment if the Government places the allotment in the

wrong location or the allotment does not contain a correct number of acres. Section 3 of 4(f)(5) eliminates applicants rights to amend their applications, even if the Federal Government caused that error in the first place.

I could go on, but my hope is—I'm pretty confident that working with you and your staff and those affected parties insofar as Native allotments are concerned, these existing rights, and there are at least seven existing rights that are being eliminated by this bill, that we can tweak the language in such a manner that the existing rights of the allottees will be preserved. Because if they are not preserved, I do believe that that is a violation of our rights, whereby some of our rights are taken away, constitutional rights are taken away, because these things are in effect taking our property interests away without due process.

That is where our major concern over title 3 arises, but like I said, I'm pretty confident that if we get our heads together with your staff, some people that are involved with this issue and have been interested with this issue for a long time, that we can find and tweak the language so that what is being eliminated by this bill will be right, and then I think it's going on to be an excellent bill.

Senator MURKOWSKI. I appreciate your willingness to work with me and with my staff and committee staff to make this work, because it does have certain areas, as you point out, that are critical, and we need to make sure that it's going to do what it is we're intending to do, so I look forward to working with you and others within the AFN. I know you mentioned in your testimony requests for possibly additional field hearings. I will tell you, and others, that during this August recess, we have not scheduled any more. As I understand, I think I get one field hearing a year—is that how it works—within the committee, so we won't have the opportunity for a formal hearing as such on this legislation.

We will be having additional hearings back in Washington, D.C., on these three identical bills, so that opportunity is out there, but it doesn't help people like Ms. Miller, who I agreed, it is a long way coming from Juneau. It's even going worse going back to the Washington.

As I'm traveling around the State this month and going out to many of the rural communities and speaking with many of our Native leaders, I will be asking the questions, and hopefully will have an opportunity to get some good input from across the State as we travel, but the opportunity for another field hearing in August is not available at this point, to let you know. I appreciate your responses.

Next, let's go to Mr. Borell. You mentioned, Mr. Borell, how this Cape Fox legislation would provide some economic benefit, and I think you spoke generally, but could you give us some additional specifics?

Mr. BORELL. Yes, Senator. Specifically, I think my compadre here defined the benefits from the Kensington gold project, and that is the primary and immediate benefit of this legislation. It would facilitate getting that project up and working in an economical fashion. Price of gold, obviously, varies significantly over time, and that particular project has been permitted, been through the EIS proc-

ess twice already, and because of the price of metal going down, it's not been economic by the time the EIS was finished. So at this point, it looks like this is very viable approach, and it could become a viable project.

Senator MURKOWSKI. You spoke of the problem with lingering withdrawals. In your perspective, once the purpose of those congressionally-established withdrawals have been resolved, should they go away?

Mr. BORELL. Absolutely. I think Mr. Loeffler described one of them in the 40 Mile, and, again, for people's impressions here, the 40 Mile River system is, what, somewhat over 400 miles in length, and we count all the different tributaries, then the original closure was 2 miles wide off the centerline, and so when the actual designations occurred as part of ANILCA, then that designation was a mile wide total, as compared to, incidentally, a half mile wide in the lower 48 States, and Alaska it's a mile wide, but that leaves this one half mile band on the other side of the 40 Mile River for those 400 or so plus miles, on each side of every small tributary, and exactly, that land is in limbo right now.

Much of it has been selected by the State of Alaska. There are numerous other examples and not just items like that one, the D 1. There are, as a matter of fact, BLM at this point hasn't—at least they haven't provided to us and we have asked for it—a complete listing of how many withdrawals there are. There are withdrawals all around the State, and I guess it's our feeling that there should be a list of all those that this legislation just takes away, just eliminates those withdrawals, so the State, the Native corporations, the village corporations can get about the process of receiving their lands.

Senator MURKOWSKI. In your testimony you seem to suggest that you don't want any agency to have the authority to close areas to mineral entry, and I take that to mean that you feel this is an authority that should be reserved to Congress, and I just wanted to make sure that my assumption is correct?

Mr. BORELL. That is absolutely correct. The State of Alaska agencies proved beyond any doubt for us, at least, that agencies do not have the ability to hold their appetite. Their appetite for additional closures continues. I'm not saying this administration, but there is no question but what overtime all of the available public lands would be closed in some fashion or another under some scenario or explanation that makes sense to somebody, but we believe that is such a crucial decision that the Congress itself and the president signing a bill must make that decision.

Senator MURKOWSKI. And, finally, you had indicated that 6 months wasn't enough time for the State to react to the final lands available. Can you go further with that?

Mr. BORELL. Yes, with all these—both the withdrawals that we believe need to be removed, but also the over-selections by the village corporations, the Native corporations, once those have been established and settled, and they occur prior to settling of the State of Alaska's land entitlement, they, if you will, take precedence, or at least that's the way they are being treated, for sure, at that point lands that have been over-selected for the Native corporations would become available for the State of Alaska, and the State

of Alaska doesn't get any additional land and they can't make new selections, but these are selections that have been made, and they are, if you will, they are sitting on top of a Native selection, and if the Native selection is diminished, if it's made smaller because the Native entitlements has been addressed and answered and transferred, the State of Alaska needs time to be able to look not at just one little parcel at a time, but be able to look at the entire State and say, okay, these are the priorities here, here, here and here, not just piecemeal little individual sections. That's our point.

Senator MURKOWSKI. Thank you. We're now back over to Mr. Van Tuyn, and you started off by expressing concerns with the legislation. I guess the concern that you have is the lack of public process, and had actually suggested or actually suggesting that we should pull the legislation at this point in time. And I would agree with you. It is complex. It is very comprehensive, but our land issues have always been very complex, and I guess the purpose in moving forward with legislation like this is to get that public process moving forward, and certainly my experience has been the best way to do that is get something out on the table, so that people can review, to get this public discussion, and to get the issues out on the record.

Your written testimony indicates that there is lot in here that you don't agree with, but I guess I would ask just in terms of a process issue, how can we resolve our lands issues? We heard from Mr. Loeffler that if we continue at the rate that we're going, it's another 85 years in order to complete the conveyances. So how do we receive our lands that were promised to us under statehood, promised to the Native Alaskans, how do we do that if we don't start someplace? Maybe that's a little bit of a rhetorical question, but I would like your response.

Mr. VAN TUYN. Thank you, Senator. One of the interesting things we found as we looked at this bill that we just found out about it very recently is that our questions that we posed to the Department of the Interior, Bureau of Land Management, they don't have all the answers themselves. These are very fundamental questions, and it seems to take quite a while for them to answer, and this leads us to contemplate the idea that perhaps an administrative process that identifies the exact problems, comes up with a conclusive solution through a public process, that that process could lead to something that could resolve these long-standing land entitlement issues.

To be sure, the conservation community has an interest, certainly, in land ownership. This is simply common sense. The conservation system units ought to have boundaries that people understand, so the managers can deal with it, the public have reasonable expectations about what they are, and the private sector has an ability to move ahead with their plans in areas where it is appropriate to do so. But the questions we have on this bill are so fundamental; again, how many areas of CSUs potentially are affected?

That's one question, and it's a very difficult one to answer, and it concerns us that a very august and important body, such as this subcommittee, would have to spend a lot of time to get to the—and be responsible for getting the answers to all those questions when it's obvious BLM is the one that has that information.

Senator MURKOWSKI. So our goals are the same. We both agree that it benefits Alaska to move forward with the conveyance process and to do what it is that we have to do to make that happen. We're in agreement there, but concerns are, perhaps, how much discretion the Secretary may have, limitation on public input——

Mr. VAN TUYN. The process is important. Thank you, Senator. The process is very important, and at the same time, we have concerns that in streamlining—someone mentioned earlier the idea that the section 209 authority creates this simple process. Well, it's very simple, because it rights away the existing protections. That is a very simple way of doing it, with one stroke of the pen. The type of process that provides substantive protections is gone, and that is of great concern.

The promised land, you know, that aspect of it is important. It's not promises in the future. It's not new entitlements in the future. It is the land that was promised in the past, and that should be the focus. We have to be very careful not to create new entitlements where what we're trying to do is simply finalize previous ones.

Senator MURKOWSKI. I appreciate your comments and testimony and appreciate you being here this morning. This legislation was introduced 2 weeks ago, and in order to make it part of this hearing, it had to be introduced with two weeks' advanced notice, so that's probably the biggest reason why you have not had further opportunity to go into the legislation in detail, and I would invite you, and welcome you, to work with our office, work with the committee, work with all those involved to make sure that you do have that public input that is so necessary that will hopefully get us all to the same goal, which is conveyance of our land, but I look forward to working with you and the trustees on this, and hope we can do that.

Mr. VAN TUYN. Thank you, Senator, and thank you again for inviting me today.

Senator MURKOWSKI. You bet. Thank you. Mr. Borup, talk a little bit about Cape Fox. You mentioned some of the positives, the economic benefits if this legislation moves forward. What happens if we don't—we're not successful with this legislation? What would be the impact on the village of Saxman and the village corporation without this?

Mr. BORUP. Well, again, it would be just one more lost economic opportunity. We'd have to find other ways to create value for our shareholders, and other ways to find jobs for our shareholders, and it's very difficult with tourism driving the economy. We are grateful for the economic impact of tourism, but those are seasonal jobs. We can employ people for four, five months of the year. What we're having trouble doing is employing them year-round with jobs that will support families.

If this doesn't work, one of the other areas would be for us to partner elsewhere in the State, but given that means that we're having to send the wage-earners out of their community to earn a living. Something we're going to have to do. We don't have those opportunities in Ketchikan right now.

Senator MURKOWSKI. I understand that all too well. You were pretty emphatic in your statement earlier that there is no inten-

tion—Cape Fox has no plans to log in the area of the exchanged lands. Is that——

Mr. BORUP. That's correct. From what we understand, there is little economic value, and we have no plans to log there.

Senator MURKOWSKI. Because that obviously was a concern expressed by some. You also mentioned the recreation issues in Berners Bay, and there has been some concern that there is going to be an infringement, if you will, but your statement seems to indicate that the principal use areas that are within the forest lands are not included in this proposed exchange?

Mr. BORUP. That is absolutely correct. They are not. I think also the history of Cape Fox land management will show that we're very sensitive to the public needs. I'm sure you're familiar with the Harriet Hunt area outside of Ketchikan. Access to that very beautiful recreation area is over Cape Fox land. We have worked with the public for decades now to ensure reasonable access, whatever makes sense.

Senator MURKOWSKI. You have also spoken a little bit earlier about how Cape Fox has managed some of the lands for conservation purposes and wildlife purposes. Can you give us a little more in terms of what you have specifically done in the past as relates to conservation and wildlife?

Mr. BORUP. Certainly. The first notable step towards this was designation of the White River area as the Cape Fox Wildlife Preserve, and what that means is that that area, which is approximately 5, 6,000 acres will now be managed from a more holistic perspective. I'll be the first to admit that in the past, a lot of corporations have managed their land by logging them and then waiting for them to regrow without any thought of what they're going to do in the interim, the 40, 50 years in the meantime.

We have taken the first steps towards managing those lands holistically, and for the advancement of wildlife in that area, and that will be for the enhancement for wildlife and non-consumer uses. We can use it to attract higher paying and higher margins of tourism projects, or get the use to support subsistence needs of our shareholders. We hope to use that one area as our model and repeat it throughout all of our lands.

Senator MURKOWSKI. Thank you. I appreciate your testimony and your willingness to answer questions.

Mr. BORUP. Thank you for the opportunity.

Senator MURKOWSKI. Mrs. Miller, I appreciate the time and the effort you have taken to come up from Juneau, and I do thank you for your testimony this morning. You have mentioned also a hearing in Juneau, and I would agree that that is the best venue for a field hearing on this legislation. As I have indicated earlier, we don't have that flexibility or the ability to be doing that at this point in time. But I am actually traveling to Juneau tomorrow morning and will be there for a day and a half and, again, it's one of those issues when we're in the community we do want to make the effort to speak with the people in the area, those that are affected, and we will be making sure that we get that input.

But in direct response to your question as to a field hearing itself, we won't be doing anything as formal as that. We are having what I'm calling an economic summit tomorrow in Juneau. We will

be discussing the issues of the area, and I'm sure that this will come up in discussion, but, again, it's necessary to get the input from not only the members of your clan, but those in the area, so I appreciate you bringing that to our attention. Now, you mentioned that you had not heard from neither Sealaska or Cape Fox as to their intention on the ancestral sites, on the burial sites, and I hear very clearly the concerns that you have expressed. It was my understanding that Sealaska has made a public commitment to protect the burial ancestral sites. Is that correct? Are you familiar with that at all?

Mrs. MILLER. No, I'm not. They have not contacted us, and they never contact us, and if we do the land in the area, and I do—if you can't hold another hearing in Juneau, please come next year.

Senator MURKOWSKI. I will consider that an invitation.

Mrs. MILLER. Please don't rush this bill. It is not necessary. There have been a lot of discussions about the road going out to Berners Bay, and it's been put on the ballot, and it's been voted down. I think you should listen to the people. It's very dear to us, and I agree to listen to the people.

Just like I stated, in the olden days, you traveled to somebody else's territory, you needed to get permission, and in the olden days, we respected one another's property. We need to get back to that. We need to get back to teaching the young people how it was a long time ago. Holding a lot of classes on that. In fact, I'm going to be one of elders that's going to be on that board, so that I'll teach the young people the right way, the correct way, the old way. Again, they need to listen to the people about Berners Bay.

Senator MURKOWSKI. Thank you. We can all stand to listen to our elders and those that have great wisdom to share. So I appreciate that. Thank you, again, for your testimony. Mr. Verrett, you mentioned that perhaps the legislation is a little bit long, and I agree. We can tend to go on more than we need to. And you have indicated that section 4 is really all that is needed to address the situation you experienced out in the Bristol Bay area. I guess I would ask for your comments on the rest of it. Are you viewing it as just extraneous, or do you believe that it complicates the legislation unnecessarily?

Mr. VERRETT. I think both. It is controversial. As I previously testified, I participated in a number of meetings on draft legislation to solve the problem, and provisions other than section 4 have been included at the request of various interest groups in the legislation that seem to be competing. It is my fear and the borough's fear that this legislation will get bogged down by these extraneous provisions and that the true individuals will be harmed are the allottees.

This problem has been festering for 2½ years. Allottees are unable to convey lots in existing subdivisions because there is a cloud over whether there is legal access to the subdivisions. New subdivisions are not being reviewed because there is no legal authority to provide legal access, and it is the individual allottees that are be being harmed, our citizens are in particular. We have a number of examples where the economic harm has been pretty significant.

So I'm fearful that including the rest of the language, the extraneous language, if you will, that is controversial will further delay

the bill. Legislation needs to be passed to allow the allottees to subdivide their allotments and to enjoy the economic benefits, hopefully during their lifetime.

Senator MURKOWSKI. The existing regulations, in your opinion, don't address the issue or allow for resolution of the subdivision—subdividing Native allotments, it doesn't help us, the department's regulations?

Mr. VERRETT. It's the borough's position that it does not, because the current regulations, as I understand them, require or grant authority to the BIA to approve applications for easements and rights-of-way. The applicant, in this case local government or the State of Alaska in the unorganized borough, would be required to apply for BIA for a right-of-way or an easement. The current CRRs impose significant restrictions and burdens upon an applicant. Local government, the Bristol Bay Borough in particular, is unwilling to undertake those additional legal requirements to apply for rights-of-way within a subdivision that under the State statutes—State statute and borough ordinances require to be dedicated to the public at large by an individual who wishes to subdivide their property. We're just simply not willing to do that.

Senator MURKOWSKI. Well, we're just about to noon, which is the scheduled time for adjournment this afternoon. I want to thank you all for your testimony. Thank you all for your time, both those of you who have spoken and those of you who have come to listen.

Again, your testimony is building a record from which we hope to gain some resolution and some compromise, and I think the input we have received today has been very helpful, and helpful to me as we start this public input and start the process on these many issues. And I would like to just make special acknowledgment in thanking Mr. David Brooks, who is senior counsel for the Democratic Committee staff, thank him for his time and coming to Anchorage and helping us with the invitations of certain witnesses.

I want to thank Mr. Bouts for his assistance as well as Jean Rivers, Council and Trish Aspland, both of whom have joined me as fellows in the office, and, again, been very, very helpful as we craft the legislation.

I would again invite any of you to add to the record. We will hold the record open for an additional two weeks to take written testimony. We will take all the written testimony that was delivered here today. That will be part of the record, but would encourage testimony to be submitted. I do understand that there is information at the back that allows people to know to send it; is that correct? How do they get their testimony to us, then?

VOICE. Send it to the U.S. Senate.

Senator MURKOWSKI. Send it to the U.S. Senate. How simple is that? Energy Committee, probably attention to—he's making it real easy. If you send it to our Anchorage office here, we can forward it. Or if you're from Juneau, send it to the Juneau office, but if you get it to my legislative offices, we will make sure that that is entered into the record.

And I would like to also mention that the committee will have a second hearing on these same bills back in Washington. It will probably be sometime in September or October. If you'd like to be notified of those committee meetings, please let us know as well.

With that, I thank you all for your attention this morning and for your input, and we are adjourned.

[Whereupon, at 12 p.m, the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF JACK HESSION, SENIOR REGIONAL REPRESENTATIVE, SIERRA CLUB

On behalf of the. Sierra Club, a national environmental organization of over 700,000 members with chapters in every state, I request that this statement be placed in the record of the August 6, 2003 Anchorage field hearing on S. 1466, S1421, and S. 1354.

S. 1466, Alaska Land Transfer—Acceleration Act of 2003

S. 1466 was introduced on July 25, 2003, 12 days before the Anchorage field hearing. At 69 pages, it is an unusually complex and, as it turns out, controversial measure containing major provisions affecting the federal lands. Its scope extends well beyond the basic purpose of expediting conveyance of the remaining federal land grants to the State of Alaska and Alaska Native corporations.

Members of our organization have just begun their analysis of the bill. It is clear that extensive additional research is needed, to fully explore the bill's ramifications, especially with respect to the national conservation system units of the Alaska National Interest Lands Conservation Act of 1980. Consultations with the State of Alaska and federal land management agencies will be necessary in order to evaluate the effect of this bill.

I understand that the Anchorage field hearing will be followed by another hearing in Washington, D.C. following the August recess. Our members will utilize this additional time to examine the bill in detail, and to provide the Committee with our recommendations when the bill is again the subject of a hearing.

S. 1461, Alaska Native Allotment Subdivision Act

This is a technical, non-controversial proposal.

S. 1354, Cape Fox Land Entitlement Adjustment Act

The Sierra Club is on record as strongly opposed to this bill. The Juneau Group of the Sierra Club will submit a detailed analysis to the Committee.

Thank you for considering our views.

STATEMENT OF ARNOLD BROWER JR., PRESIDENT, INUPIAT COMMUNITY OF THE ARCTIC SLOPE

The Inupiat Community of the Arctic Slope; a Federally Recognized Tribal Organization representing and acting in the best interest of Native Allotments Owners, Applicants and Heirs of the Northern Alaskan Native Villages of Kaktovik, Nuiqsut, Anaktuvuk Pass, Atqasuk; Wainwiight and Point Lay;

Wholeheartedly supports the testimony of Mr. Edward Thomas, President of the Central Council Tlingit and Haida Indian Tribes of Alaska to be given to the United States Senate Committee on Energy and Natural Resources; Subcommittee on Public Lands and Forests Hearing on Senate Bill-1466 (The Alaska Land Transfer Acceleration Act of 2003) on August 6, 2003.

The Inupiat Community of the Arctic Slope assists and oversees on behalf of our tribal entities the Native Allotment Application and Adjudication Process approximately 479 Native Allotments in the Certified and/or Pending state with over 100 applications having been classified as "closed". Numerous of these "closed" applications have been and are claims for acreage within the Arctic National Wildlife Reserve (ANWR) and Prudhoe Bay Areas.

Inupiat Community of the Arctic Slope is compelled to stand in support of President Thomas with testimony of elimination of rights and accurate summarization of delaying factors of procedures utilized and created within the various agencies of the United States Government and the State of Alaska regarding the certification

and finalization of the Native Allotment application process over the past several decades.

To not stand in support of the President of Central Council Tlingit and Haida Indian Tribes of Alaska on this particular issue, would be a failure in trust responsibilities for restricted properties on our governing body to properly represent and act in the best interest of Native Allotment Owners, Applicants and Heirs of the Inupiat Community of the Arctic Slope.

STATEMENT OF ELEANOR HUFFINES, ALASKA REGIONAL DIRECTOR, AND ALLEN E. SMITH, ALASKA SENIOR POLICY ANALYST, THE WILDERNESS SOCIETY

Senator Murkowski, Mr. Chairman, members of the committee, we represent The Wilderness Society. We want to thank the committee for this opportunity to address the issues in S. 1466, a bill to facilitate the transfer of land in the State of Alaska and for other purposes. Eleanor Huffines and Allen E. Smith have both served appointed terms on the BLM Alaska Resource Advisory Council when it has addressed the issues raised by this proposed legislation and are familiar with those issues. We are also represented in testimony on S. 1466 by Trustees for Alaska and request that our testimony and theirs be printed in the written record of this hearing and request the right to submit additional comments on S. 1466 to the record as appropriate.

Founded in 1935, The Wilderness Society works to protect America's wilderness and wildlife and to develop a nationwide network of wild lands through public education, scientific analysis and advocacy. Our goal is to ensure that future generations will enjoy the clean air and water, wildlife, beauty and opportunities for recreation and renewal that pristine forests, rivers, deserts and mountains provide. With 200,000 members nationwide, 700 of whom live in Alaska, The Wilderness Society and its members have had a long-standing involvement in the history of land law in Alaska and the protection of the extraordinary wilderness and wildlife values of the national interest lands in Alaska since its founding.

SUMMARY STATEMENT

The Wilderness Society shares the goal to facilitate expeditious transfer and settlement of title to public lands in Alaska rightfully selected under authorization by Congress as Native allotments, Statehood grants, and Native claims. We applaud efforts to do that. The passage of the Native Allotment Act, the Alaska Statehood Act, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska National Interest Lands Conservation Act (ANILCA) have set up land claims that must be meshed with each other where conflicting claims exist. We should all be able to agree that there can be no certainty to management on any lands in Alaska where there exists uncertainty of ownership.

We agree that there is a need to complete the land selection and conveyance processes in Alaska. However, we are disappointed that S. 1466 makes no assertions of purposes or findings of fact to justify the need for the specific provisions of this proposed legislation and has had no preparatory public process, such as a Legislative Environmental Impact Statement (LEIS), to develop those purposes and facts. Further, we initially find there are provisions of S. 1466 that would contravene ANILCA and other laws, grant unwarranted administrative authority, and raise unanswered concerns such that we oppose them. While we are initially specifically concerned about Sections 106, 107, 201, 204, 207, 209, 212, 213, and 501, we have not had time to evaluate all parts of S. 1466 and may find other areas of concern as well. We are also concerned that S. 1466 has come up quickly without sufficient time for Senator Murkowski and the U.S. Department of the Interior to fully explain the need for it, and for the public to study it, understand it, and develop informed opinions about it to allow thoughtful debate. We hope that there will be sufficient additional public process and time for the public to address these concerns in subsequent steps of consideration of S. 1466. Until our concerns and questions are answered, we cannot support this bill and oppose its movement through Congress.

DISCUSSION AND ANALYSIS

Before deciding what aspects of S. 1466 are truly needed, we must first ask for an explanation and justification of why current law, as enacted and amended, does not achieve that. We do understand the legal and physical complexity of resolving issues of ownership where overlapping or adjacent claims of Native allotments, State selections under the Alaska Statehood Act, Native claims under ANCSA, Conservation System Units and public lands under ANILCA, and other private interests

intersect or coincide. We are also aware of the effort that BLM has been making in Alaska to discern what is needed to help expedite reaching settlements on patents and conveyances, and believe that the public process could benefit from a public reporting and accounting of their findings, preferably through a LEIS process. We do not want to see a solution that is worse than the current practices and procedures. Any expedited or accelerated land transfer process must still meet the tests of the intent of the original actions of Congress and adhere to the same fairness of tests of fact now provided.

There is also a case to be made that Congress should first hold oversight hearings on the implementation of these existing laws before venturing forth with new legislation such as S. 1466 that may create unintended consequences in trying to accelerate the process. Each of these laws governing land selections for Native allotments, Statehood, Native claims, and ANILCA took Congress and the public several years to craft, debate, and pass because of the enormity and complexity of the public policy questions involved. Congress should be just as thoughtful in trying to find ways to speed up and expedite the claims settlement process. Congress has a rich history of conducting such oversight that could be useful and we urge that that be done here.

We wish to draw attention to the actual status of the settlement of land claims as one measure of what the goals are that the agencies are trying to accomplish and the magnitude of the issues that must be addressed to expedite the process. Attachment A, "Summary of Status of Alaska Land Claims,"* is provided as a picture of how much progress has been made to resolve these claims (Source: BLM Alaska State Office Workload Analysis Summary 07-25-03). As one can see from this analysis, the State of Alaska selections are 39% patented, 45% tentatively approved and interim conveyed, with 16% remaining to be settled from what has been selected. Similarly, the Alaska Native claims are 39% patented, 40% tentatively approved and interim conveyed, with 21 % remaining to be settled from what has been selected. We draw attention to these facts because we believe that they should factor into the kind of solutions sought and applied. Patented lands are complete in their conveyance. Tentatively approved and interim conveyed are done except for boundary surveys and patenting. The remaining entitlements have been selected as part of over-selections allowed in the original statutes but have not been decided because of a variety of reasons that include such things as setting priorities for final selections and resolving conflicting claims with other claimants. We believe that there are differences in the solutions needed between these classes of settlement status. The tentatively approved and interim conveyed classes have a different set of administrative needs to complete than do the remaining entitlements, and any new legislative procedures to accelerate conveyance should recognize those differences. We do not see those distinctions of classes and stages of completion made clear in S. 1466.

Which raises several concerns and questions to The Wilderness Society regarding S. 1466 that we believe should be answered before any bill proceeds:

(1) How many acres of public land are actually affected by S. 1466?

(2) How many acres of public land are affected by each provision of S. 1466?

(3) How many acres of ANILCA Conservation System Units are affected by S. 1466?

(4) Will S. 1466 add to the parties' entitlements under existing law and if so, how many acres, where, and from where will it come?

(5) Will any aspects of S. 1466 reopen and/or change existing patented land settlements, and if so, how much and where?

(6) How are the conflicting priorities of Statehood claims, Native claims, Native allotments, and ANILCA Conservation System Units to be settled by S. 1466, and how is the public involved in settling those conflicts?

(7) Would the sponsors of S. 1466 and the Department of the Interior commit to conducting a Legislative Environmental Impact Statement (LEIS) or LEIS-type of process to answer these and many more questions that flow from the enormity of what S. 1466 could affect?

The Wilderness Society has expressed initial concern above in our Summary Statement about Sections 106, 107, 201, 204, 207, 209, 212, 213, and 501. We find these provisions of S. 1466 would contravene ANILCA and other laws, grant unwarranted administrative authority, or raise unanswered concerns such that we oppose them. By reference, we are signatories to and incorporate the testimony of Trustees for Alaska as if it is our own and defer to Trustees to review S. 1466. Below, by

*The attachment has been retained in subcommittee files.

way of example of the concerns we have with S. 1466, we specifically address Sections 204, 209, 213, and 501 as follows:

Section 204. Discretionary Authority to Convey Subsurface Estate in Pre-ANCSA Refuges: This provision would give the Secretary authority to allow Alaska Native Regional Corporations to select subsurface land under village corporation surface lands within pre-ANCSA National Wildlife Refuges (except for Kodiak and Kenai). In order to protect the purposes for which these refuges were established this practice is not allowed under current law and we strongly oppose allowing it now.

Section 209. Bureau of Land Management Land: This provision would allow the Secretary to open or close BLM lands in Alaska that are withdrawn under Section 17(d)(1) of ANCSA to any and all forms of appropriation under the public land laws without prior notice, opportunity for public comment, environmental review, or judicial review;- This provision would effectively remove BLM lands in Alaska from having to comply with the Federal Land Policy & Management Act (FLPMA) and would grant an extraordinary and unprecedented amount of authority without accountability to the Secretary. We strongly oppose this provision.

Section 213. Conveyance to Kaktovik Inupiat Corporation and Arctic Slope Regional Corporation: This provision requires the Secretary to convey certain lands on the coastal plain of the Arctic National Wildlife Refuge to the Kaktovik Inupiat Corporation and the Arctic Slope Regional Corporation. Congress has previously acted to prohibit further conveyances of lands within the coastal plan of the Arctic National Wildlife Refuge and we can see no justification for doing it at this time. We strongly oppose this provision.

Title V—Alaska Land Claims Hearings and Appeals Section 501: This provision authorizes the Secretary to create a new appeals and hearing process for conveyances under the Act, appoint administrative law judges "or other officers" for specified terms, and promulgate final regulations governing procedure without an opportunity for public review. This provision effectively removes all of these proceedings from the established procedures of the Interior Board of Land Appeals (IBLA). We strongly oppose this provision.

CONCLUSION

The enormity of the discretionary administrative authority that would be granted without accountability to the Secretary of the Interior by many provisions of S. 1466 is staggering and unprecedented. It does not come close to meeting historic standards of checks and balances and openness in public process. Regardless of ones commitment to the justifiable need to complete all land selections and conveyances to achieve certainty in land ownership and management, it is hard to believe that such a permissive grant of authority is either warranted or justified to solve any problem. We strongly oppose such action. Where S. 1466 would facilitate the reopening of selection rights and further cloud resolution of ownership and management by broadening the scope of what must be resolved, we also strongly oppose it.

We are just beginning to evaluate S. 1466 and want to find workable solutions to the need to complete all land selections and conveyances, but from our initial understanding of the bill we do not believe that S. 1466 does that. The solutions may lie more in appropriating sufficient resources to expedite the survey work and in streamlining procedural requirements rather than trying short circuit the statutory requirements as S. 1466 appears to do.

There are many unanswered questions about S. 1466. The Wilderness Society believes that more information is required to justify this legislation, that there should be a LEIS or LEIS-type of public process to generate answers to these questions, and that Congress should hold oversight hearings on how best to address these very complex issues before any legislation proceeds. We cannot support S. 1466 as drafted but stand ready to help resolve these issues.

We again thank the committee for this opportunity to comment on S. 1466 and these important issues affecting Alaska lands.

STATEMENT OF CHRIS E. MCNEIL, JR., CHIEF EXECUTIVE OFFICER, SEALASKA CORPORATION

Mr. Chairman and members of the committee, thank you for the opportunity to testify on behalf of Sealaska Corporation regarding Senate Bill 1354, the "Cape Fox Land Entitlement Adjustment Act of 2003." Sealaska is the Regional Native Corporation for Southeast Alaska under the Alaska Native Claims Settlement Act ("ANCSA").

Sealaska Corporation supports the enactment of S. 1354 because it:

- allows for native ownership of a recognized Native historic site;
- creates a potential opportunity for jobs for Sealaska shareholders;
- creates business opportunities for Sealaska and other Native Corporations in services relating to mine development;
- makes another step towards the fair resolution of Alaska Native Land Claims Settlement Act; and
- resolves management inefficiencies for Sealaska and the United States Forest Service on the Tongass National Forest.

The bill provides for adjustments to resolve inequities in Cape Fox's outstanding land entitlements under ANCSA. The adjustments to Cape Fox surface land and selection rights in turn require adjustments concerning Sealaska's title and ANCSA conveyance rights to subsurface lands underlying the Cape Fox lands. S. 1354 provides for these adjustments. S. 1354 also resolves land encumbrances that negatively impact the USDA Forest Service management of certain split-estate lands (USDA is the surface owner and Sealaska is the subsurface owner) and ensure that valid subsurface selection rights in which Sealaska has conveyance rights to the subsurface beneath Tongass National Forest surface lands do not create more split-estate. This legislation will ensure that the split-estate areas do not present a continuing encumbrance and management problem for the Forest Service. The bill resolves the outstanding Cape Fox and related Sealaska entitlement issues in a fair manner that furthers the objectives of ANCSA, benefits Tongass National Forest management, and otherwise serves the public interest.

The resolution of these issues in S. 1354 incorporates exchanges of Cape Fox and Sealaska lands and conveyance rights for equal value lands in the Kensington and Jualin mining district area on the Tongass National Forest. The transfer to Sealaska and Cape Fox of adjacent tracts in this area, as provided in the bill, will eliminate from the national forest lands that are already heavily encumbered with unpatented mining claims. This is an area that is already zoned under the Tongass Land Management Plan for mining development. This area surrounds patented claim, private land inholdings.

The simplifications of national forest boundaries and management that will be achieved through the exchanges are of substantial benefit to Tongass management and the public. The exchanges will not have any significant effects on Forest resources, uses, or values. The exchanges do not involve any Berners Bay LUD II lands. Any mine development in the area will remain subject to federal and state environmental protection requirements.

The claim holders are consenting to these exchanges. The ANCSA conveyances to Cape Fox and Sealaska in these exchanges will remain fully subject to all existing mining claims, State of Alaska selections and rights-of-way, and other existing third-party rights. The exchanges will provide Alaska Natives an opportunity to participate with the claim holders and gain experience in mine development and related enterprises, including potential jobs for Sealaska shareholders.

The Sealaska/Forest Service exchange provided for in S. 1354 also allows Sealaska to receive conveyance to a site of historical value to Native shareholders in the vicinity of Slate Creek Cove. This site has not been eligible for selection and conveyance under Section 14(h)(1) of ANSCA because of the presence of mining claims. Once conveyed, guidance for the protection of this site will be provided through the Sealaska Heritage Institute ("SHI"), its Board of Trustees and Committee of Traditional Scholars. SHI was organized to preserve the language and culture of Tlingit, Haida and Tsimshian Indians.

Sealaska is confident that the parties can expeditiously reach agreement regarding the equal value of the particular lands to be specified for the exchange, as provided in S. 1354. Significant progress has already been made to that end. Sealaska and the Forest Service have achieved substantial progress already on other elements of the Sealaska/Forest Service land exchange provided for in the bill.

The Sealaska exchange in the bill can be accomplished administratively with the Forest Service without the need for legislation, as an additional modification of the existing Sealaska/Forest Service Split Estate Exchange Agreement under Section 17 of the Alaska Land Status Technical Corrections Act of 1992, Pub. L. 102-415. However, enactment of S. 1354 will facilitate and expedite the exchange, and assure that the Sealaska exchange is completed in conjunction with the resolution of the Cape Fox entitlement issues incorporated in the bill.

In conclusion, Sealaska supports prompt enactment of S. 1354 into law. Sealaska stands ready to actively cooperate with the Secretaries of Agriculture and the Interior and with Cape Fox to implement S. 1354 once enacted.

STATEMENT OF BUCK LINDEKUGEL, CONSERVATION DIRECTOR, SOUTHEAST ALASKA CONSERVATION COUNCIL, ON S. 1354

My name is Buck Lindekugel and I am the Conservation Director for the Southeast Alaska Conservation Council (SEACC). The following statement is submitted on behalf of SEACC. SEACC respectfully requests that this written statement and accompanying materials be entered into the official record of this Subcommittee hearing.*

Founded in 1970, SEACC is a grassroots coalition of 18 volunteer, non-profit conservation groups made up of local citizens in 14 Southeast Alaska communities that stretch from Ketchikan to Yakutat. SEACC's individual members include commercial fishermen, Alaska Natives, small timber operators, hunters and guides, and Alaskans from all walks of life. SEACC is dedicated to preserving the integrity of Southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable uses of our region's resources.

On behalf of herself and Senator Stevens, Senator Lisa Murkowski re-introduced the Cape Fox Land Entitlement Adjustment Act of 2003, S. 1354, 108th Cong. (2003) [hereinafter S. 1354], on June 26, 2003. This legislation is identical to the bill, S. 2222, that was passed with a raft of Alaska land bills by the U.S. Senate at the end of its lameduck session on November 19, 2002, but died when the U.S. House adjourned without passing it. That bill, S. 2222, had been sponsored by her father, former Senator Frank Murkowski, currently Governor of Alaska. SEACC opposed S. 2222 in our testimony before this Subcommittee on June 18, 2002, and we oppose S. 1354 now.

The exchange of pristine public lands in the Slate Cove area of Berners Bay, north of Juneau, for clearcut private lands that this bill sets forth is poor policy, creates dangerous precedents, and is contrary to the public interest. We oppose S. 1354 because it:

- threatens the public's access and use of these wildlands for hunting, fishing, and recreation, as well as the interests of the Auk Kwaan, the original settlers of the Juneau area, in protecting their ancestral lands,
- frustrates the finality of the Alaska Native Claims Settlement Act (ANCSA) and invites additional land-selection conflicts across Alaska, and
- facilitates the temporary and illusory benefits from private development of the Kensington Gold Mine at the expense of continued public access and use of Berners Bay's outstanding resources.

This ill-conceived and shortsighted bill would give Cape Fox Corporation and Sealaska Corporation over 2,600 and 9,300 acres, respectively, of Tongass National Forest lands in the area of Berners Bay, 40 miles north of Juneau. See Exhibit 1.[1] In exchange, Cape Fox would trade approximately 3,000 acres of its private lands near Ketchikan, Alaska that have already been clearcut and will have little if any wildlife habitat value for hundreds of years.[2] Sealaska would exchange: 1) the subsurface estate underlying the Cape Fox exchange lands; 2) the subsurface estate it owns underlying certain Tongass National Forest lands; and 3) the rights to the subsurface estate of some Tongass National Forest lands remaining to be conveyed to it under ANCSA. See S. 1354, Section 6(c). Section 4(a) of S. 1354 also authorizes Cape Fox to select approximately 99 acres of Tongass National Forest lands outside Cape Fox's current exterior selection boundary.

> Berners Bay is Important to Residents of Juneau and Other Lynn Canal Residents Because of Its Hunting, Fishing, Recreation, Cultural, and Spiritual Values. Privatizing Pristine National Forest Lands Here Would Limit Public Access to Hunting, Fishing and Cultural Resources and Harm Important Environmental Resources in the Bay.

Berners Bay is a large inland bay and glacial valley complex located on the mainland north of Juneau. The Berners, Lace, and Antler/Gilkey Rivers are major anad-

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*The exhibits accompanying this statement have been retained in subcommittee files.

[1] Photograph of Slate Cove in Berners Bay. The orientation of the photo is north. The core area of subsurface development at the Kensington Gold Mine is to take place underneath Lions Head Mountain, the prominent peak in the photo. On the left side of the photo is the fjord called Lynn Canal, and on the right side is a main portion of Berners Bay. Slate Cove appears in the foreground. The road coming to saltwater on the right side of Slate Cove would be used for surface access to the mine site. Below the photo are two maps: the left map shows the location of Bemers Bay; the right map shows Tongass lands that would be conveyed to Cape Fox and Sealaska under S. 1354.

[2] *See* Alaback, "A Comparison of Old-Growth Forest Structure in the Western Hemlock-Sitka Spruce Forests of Southeast Alaska." In: *Proceedings: Fish and wildlife relationships in old growth forests.* American Institute of Fishery Research Biologists. p. 220-21 (1984).

romous fish streams flowing into the bay.[3] They produce four (4) species of salmon along with rainbow, steelhead, cutthroat, and Dolly Varden trout and provide good commercial fishing values and sport fishing opportunities. Berners Bay's proximity to Juneau makes it a very popular boating and recreation destination for Juneau residents. The area also provides a high quality moose hunting experience and supports healthy populations of wolves, brown bears, and black bears.

S. 1354 would harm these uses because when conveyed to private corporate ownership these lands could be clearcut, resold, or otherwise developed to support industrial activities in Berners Bay. Native corporations in Southeast Alaska have a long history of clearcutting lands to maximize revenue with little regard for fish, wildlife, recreation, or other public uses. Once privatized, public access would be denied to lands now open to the public for fishing, hunting, and recreation.[4]

Many Southeast Alaskans adamantly oppose this land exchange. A number of individuals have written letters to Senator Lisa Murkowski and other senators as well as the local newspaper, the Juneau Empire, in support of Berners Bay and its many uses. We have attached these letters and news articles to this testimony in Exhibit 3. We provide some quotations from these letters here:

> "Berners Bay is a wonderful place, a public place, a treasure place. To develop it, to log it, to dump mine tailings on it would be to despoil a natural treasure. It should remain natural public land, a legacy for your children and grandchildren and mine." Judith Maier
>
> "Nobody needs to sell lots, log, or do anything any different than what nature has done in Berners Bay." Marian Marin
>
> "Berners Bay is one of Juneau's prime hunting, fishing, and recreating areas. It's also an ESSENTIAL part of the Lynn Canal ecosystem." Marina Lindsey

The incredible natural values of Berners Bay astound locals and visitors alike each year:

> After a long Alaska winter, Berners Bay is an explosion of life in the spring. Every year in late April or early May, millions of hooligan arrive to spawn in the glacial rivers that feed the bay. For a few short weeks, tens of thousands of predators are drawn to the bay to prey on the [sardine-sized] oily, nutritious fish.

Woodford, *Berners* Bay, Juneau Empire, May 26, 2002, at C1 (Exhibit 4; also at http://uncauempire.com/stories/index.htm]).

As a critical component of the Berners Bay ecosystem, the energy-rich hooligan arrive in the rivers of the bay at a crucial time to meet the high energy demands of their predators. During the summer of 1996, highest daily average counts identified 40,000 avian predators, including 585 bald eagles, and 250 Steller sea lions, harbor seals, and humpback whales.[5] The development of industrial marine facilities associated with mining development in Slate Cove, such as shipping facilities, with the resulting increase in barge traffic and risk of fuel spills in Berriers Bay, threaten the hooligan spawning habitat and, in turn, all the predator species that depend upon them. (See additional discussion below.)

The ancestral lands of the Auk Kwaan, the first settlers of the Juneau area, extended from Berners Bay to Seymour Canal, south of Juneau. The Auk Kwaan consider the lands and waters of Berners Bay both culturally and spiritually important. Berners Bay was used by the Auk Kwaan as a source of food and Indian medicine. It also contains several old village sites, "and where there were villages there are burial sites." Auk Kwaan Tribal Leader Rosa Miller's Letter to the Editor, *Protect ancestral lands from Murkowski's bill,* Juneau Empire (May 1, 2002) (Exhibit 5).

In her June 13, 2002 letter (Exhibit 6) to Peter Gigante, then CEO of Cape Fox, Rosa Miller chastised Cape Fox Corporation for this breach of tradition:

> In the old days, when you traveled to someone else's territory, you could not land your canoe until you got permission from the clan, who lived in

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[3] An intensive assessment of fish and wildlife values on the Tongass by the Alaska Department of Fish and Game (ADF&G) identified the watersheds in Berners Bay as containing some of the most productive salmon streams in the Tongass National Forest. See Alaska Dept. of Fish and Game, Tongass Fish and Wildlife Resource Assessment 1998.

[4] *See* Letter from Berland, Lynn Canal Conservation to Senator Bingaman (June 14, 2002) (following up on earlier May 9, 2002 letter (attached) (Exhibit 2). The photo described in the May 9th letter is the same photo attached to this testimony as Exhibit 1.

[5] Marston, B.H., Willson, M.F., and Gende, S.M. 2002. Predator aggregations at a eulachon (Thaleichthys pacificus) spawning run in southeastern Alaska. Marine Ecology Progress Series. 231: 229-236.

> the area. We've heard absolutely nothing from Cape Fox about your intentions for our lands in Berners Bay.

She goes on to remind Mr. Gigante that:

> Spirit Mountain (also known as Lionshead Mountain) is sacred to us. Many times I have told the story about how our ancestors are buried there including our Shaman. Shaman spirits dwell in Spirit Mountain; this is a place that is important to the Tlingit of the past, the Tlingit of the present, and the Tlingit of the future. There are also old village sites in this area.

She concluded the letter by stating her hope that "Cape Fox Corporation will do what is morally and ethically right and help to withdraw this harmful bill now."

When Rosa Miller learned that S. 1354 would be considered at this field hearing in Anchorage, she wrote Senator Lisa Murkowski requesting a hearing in Juneau on S. 1354. Although her letter prompted an invitation from the Subcommittee to testify at this field hearing, her request for a hearing in Juneau has thus far not been granted.

In her letter to Senator Lisa Murkowski, Rosa Miller also expressed her disappointment at the lack of response from former Alaska Senator and current Governor Frank Murkowski to her many requests for assistance in protecting the Auk Kwaan's ancestral lands in Berners Bay. She wrote:

> I have written several letters . . . over the past five years, asking him repeatedly for his help in protecting our ancestral lands from proposed development projects such as the Kensington Gold Project and the Juneau Access Road. Last year, I wrote him again, urging him to help the Auk Kwaan by withdrawing S. 2222. He never responded to any of my letters, and did nothing to halt this bill. I've attached these letters for your review.

See Letter from Rosa Miller, Tribal Leader of the Auk Kwaan to Senator Lisa Murkowski (July 23, 2003) (Exhibit 7, with referenced letters).

When it passed the Tongass Timber Reform Act in 1990, Congress identified 46,000 acres of the Berners Bay watershed as one of 12 areas on the Tongass to be managed in perpetuity in accordance with Land Use Designation II (LUD II) (no commercial logging allowed). This area was chosen for special management because of its high value fisheries habitat and the fact that it is a very popular recreational destination for local residents and visitors to Alaska. Recreational activities include kayaking, fishing, camping, trapping, and hunting. Protection for these special values has been recommended and supported by the Alaska Department of Fish and Game (ADF&G), Alaska communities, and commercial fishermen.[6] By designating Berners Bay as a Legislated LUD II area, Congress directed the Forest Service to manage this area primarily "in a roadless state to retain [its] wildland character."[7] This special management designation requires that any permitted development, such as mining on patented claims, be limited in scope to be compatible with the area's wildland character. As noted by House Floor Manager Congressman George Miller, these lands "will require careful and prudent management by the Forest Service."[8]

Although the lands proposed for exchange in the Slate Cove area within Berners Bay are outside the area designated by Congress as a Legislated LUD 11 area, the exchange lands are immediately adjacent to and inextricably connected to the ecology of this entire productive watershed.[9] If this exchange is approved, the Forest Service will lack any control or influence over how this block of private lands directly adjacent to Congressionally designated wildlands is developed. The Forest Service has stated:

> As acknowledged in the [Cascade Point Access Road Environmental Impact Statement], the Forest Service *has no jurisdiction over private lands* . . . and *Forest Service policy is to avoid regulation of private lands* and to

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[6] In 1983, ADF&G recommended that this area be "reserve[d] permanently for protection of fish and wildlife." From 1987 to 1989, the communities of Juneau, Wrangell, Petersburg and Sitka supported protection of Berners Bay. In 1988, United Fishermen of Alaska included Berners Bay in a list of "priority fish habitat areas deserving protection."

[7] H.R. REP. NO. 101-931, 101st Cong., 2d Sess., at 16 (Oct. 23, 1990) (Joint Explanatory Statement of the Committee of Conference on the Tongass Timber Reform Act).

[8] 136 CONG. REC. H12834 (Oct. 26, 1990 daily ed.) (Comments explaining what kind of management was required for Berners Bay and the other eleven designated LUD IIs in the Tongass Timber Reform Act).

[9] The Alaska Department of Fish and Game has identified Slate Creek as important for the migration, spawning and rearing of anadromous fish. *See* Email from Schrader, ADF&G to Brown, SEACC (June 14, 2002) (Exhibit 8). "[R]esident Dolly Varden trout are present throughout the creek and in Slate Lake." *Id.*

recognize the rights of private land owners to reasonable access to and use of their property. . . .''

USFS, Region 10, *Recommendation of Appeal Deciding Officer on Appeals of the Cascade Point Access Road Project* at 4 (Mar. 31, 1999) (emphasis added).[10]

ANCSA Did Not Treat Cape Fox Unfairly. S. 1354 Would Frustrate The Finality Of ANCSA And Invite Additional Land-Selection Conflicts Across Alaska.

Senate Bill 1354 waives ANCSA's land selection requirements, inviting further land-selection conflicts across Alaska. The bill inaccurately suggests that this congressionally-mandated land conveyance is needed to address inequities suffered because Congress limited the national forest lands from which Cape Fox could make its land selections. *See* S. 1354, § 2. But the argument that ANCSA needs to be modified as proposed in S. 1354 to address the equity of ANCSA's land selection criteria thirty years later is not compelling.

To protect the water quality of Ketchikan's watersheds, ANCSA kept Cape Fox from selecting lands ''within a six-mile radius of Ketchikan.'' *See* 43 U.S.C. 1621(1). These limitations, however, did not place Cape Fox on an unequal economic footing relative to other village corporations in Southeast Alaska or other parts of Alaska.

Cape Fox received the same amount of land as every other Southeast village and urban corporation under ANCSA (approximately 23,000 acres). Constraints on the selection of lands resulted in some disparities between the value of timberlands conveyed to each village and urban corporation in Southeast Alaska. However, the economic benefits realized per shareholder from logging these lands were divided between widely varying numbers of people. Cape Fox Corporation has fewer original shareholders (230 shareholders) than all but one other village corporation.[11] Consequently, the direct financial benefit per shareholder was higher for Cape Fox than nearly all village corporations in Southeast Alaska.[12]

All Southeast Alaska village and urban corporations, including Cape Fox, are located on the water, and hence all were hindered in varying degrees from choosing lands from the full nine townships to which ANCSA gave them nominal selection rights. Yet, Cape Fox and the other Southeast Alaska village corporations faired far better economically than did most of the other 220 Alaska Native village corporations established by ANCSA, because they were able to select high value timberlands. Cape Fox fared better, not worse, then other village corporations under ANCSA.

Cape Fox, like other Southeast Alaska village and urban ANCSA corporations, has cut virtually all the timber from the lands it selected under ANCSA in roughly 20 years. Plainly, S. 1354 sets the precedent that Congress will make additional grants of valuable Tongass National Forest lands as recompense for the unsustainable land management practices carried out on private lands by Cape Fox and other Southeast Alaska ANCSA corporations. Clearly, it would frustrate the finality of the ANCSA settlement. *See Alaska v. Native Village of Venetie Tribal Govt.,* 522 U.S. 520, 523 (1998) (Congress enacted ANCSA ''to settle all land claims by Alaska Natives.'')

Moreover, forcing the Forest Service to convey pristine Tongass National Forest lands in exchange for stumps on clearcut, private corporation lands, as proposed in S. 1354, ignores the balanced multiple-use principles that should govern Tongass management. Such a legislatively mandated exchange would further deny any American citizen, the true owners of the Tongass National Forest, equal access to the use and enjoyment of the forest's natural resources. Any land exchanges on Tongass National Forest lands must be in the public interest and should be conducted through the Forest Service's existing administrative procedures under 36 C.F.R. Part 254.

In the past, the Alaska Delegation has passed up opportunities to help Cape Fox realize economic benefits from developing its own existing lands. An example of such efforts, one that SEACC supported, was the development of the Mahoney Lake hydroelectric project by Cape Fox. ''[Cape Fox] selected this site under ANCSA primarily for its hydroelectric potential.'' *See* Letter from Gigante, Cape Fox CEO to

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[10] The Cascade Point Access Road project refers to the 1998 approval by the Forest Service of a road easement to Goldbelt, Inc., the Juneau urban Native corporation, to access its property at Cascade Point on the southeast end of Berners Bay.

[11] Only the village of Kasaan had fewer, with 119 shareholders. *See* Knapp, Native Timber Harvests in Southeast Alaska, Table 2 at p.7, USDA Forest Service, PNW-GTR-284 (1992) (Exhibit 9).

[12] *See* Institute for Social and Economic Research, University of Alaska, Anchorage, *A Study of Five Southeast Alaska Communities,* at p. 94-97 (1994).

Senator Frank Murkowski, p. 2 (Feb. 16, 2001) (Exhibit 10). But instead of helping Cape Fox pursue this project, the Alaska Delegation worked to stifle this private initiative by promoting other projects over the objections of Cape Fox. *See* Letter from Alaska Delegation to Boergers, FERC (Feb. 8, 2001) (Exhibit 11).

> S. 1354 Facilitates the Temporary and Illusory Benefits from Private Development of the Kensington Gold Mine at the Expense of Continued Public Access and Use of Berners Bay's Outstanding Resources.

As we detailed in last year's testimony, the proposed land exchange is directly related to plans by Coeur Mining Company to develop and operate the Kensington Gold Mine.[13] As noted in a press release issued by former Senator Frank Murkowski's office on April 23, 2002, regarding last year's S. 2222 (Exhibit 13): "The land to be selected near Slate Lakes, north of Berners Bay, will enable the proposed Kensington Gold Mine to operate totally on private land, which will help speed its development." However, the most critical factor slowing Coeur's development of this mine is not land ownership, but gold prices.[14]

Although Coeur has possessed all the permits and other approvals it needs to develop the mine since 1998, it has redesigned the project several times in an effort to reduce operating costs and make the mine more profitable given projected gold prices. In an effort to reduce its waste disposal costs, Coeur's latest design modification includes dumping mine tailing waste into Slate Lake, a pristine mountain lake that flows into a productive salmon stream in Berners Bay.[15] Such a proposal violates the Clean Water Act because the intent of Congress in enacting this important statute was to treat waste, not dilute it by mixing it with uncontaminated fresh waters.[16] Slate Lake is "a water of the United States" and to convert it into a mining waste disposal facility is flatly inconsistent with the primary goal of the Clean Water Act "to . . . maintain the chemical, physical, and biological integrity of the Nation's water." See 33 U.S.C. §1251(a). Coeur's amended plan of operations will lead to substantial legal controversy both inside and outside of Alaska.

To further the development plans for operation of the mine, the maximum life of which is expected to be only 15 years, Coeur has entered into land-use agreements with both Cape Fox and Sealaska corporations to use. the Berners Bay lands these corporations would gain through S. 1354. *See* Exhibit 14 at 2. Coeur has already entered into a similar agreement with another ANCSA corporation, Goldbelt, Inc. Coeur's new plan of operations proposes to construct a dock on Goldbelt land at Cascade Point to ferry workers across the bay to Slate Cove, rather than housing workers on site. Berners Bay would be transited 6 to 10 times each day by ferries transporting mine workers. In addition, huge barges, 286′ long and 75′ wide or larger, would make multiple trips each week to transport ore, fuel, and supplies across the bay.[17] Degradation of the quality of the clean, biologically-productive waters of Berners Bay by this commercial traffic would be very likely.

In sum, Coeur's latest plan of operations, which S. 1354 would greatly expedite, is inconsistent with managing Berners Bay for the long-term benefit of all the current public uses. Industrial mine development, particularly the proposed mine tailings dump, within the Berners Bay watershed will harm existing public use of the bay for fishing, hunting, and recreation. There are also grave risks associated with development and operation of the mine. If the proposed dam ever failed, nothing would stand between the toxic sediments stored behind it and the rich marine resources in Berners Bay.

SEACC'S ADDITIONAL CONCERNS WITH SPECIFIC PROVISIONS OF S. 1354

1. Effect of Proposed Conveyances on Public Access and Uses

As introduced in 2002, Section 5(b) of S. 2222 included language directing that "[t]he Secretary of Agriculture shall exclude from the lands offered all land from the mean high tide mark to a point five hundred feet inland of all marine shorelands in and adjacent to the waters of Berners Bay; Provided, said exclusion shall not include any lands in the Slate Creek Cove area within [property description]." By not

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[13] *See* Inklebarger, *Land swap could help open mine,* Juneau Empire (April 26, 2002) (Exhibit 12).

[14] *See* Press Release from Coeur Alaska, *Kensington gold project moving forward* (April 25, 2002) ("Falling Gold prices have made the approved plan economically infeasible.") (Exhibit 14).

[15] Although Coeur describes Slate Lake as a "muskeg lake", the photo in Exhibit 1 to this Statement shows that it is a pristine, fresh-water lake.

[16] *See* Fry, *EPA looks askance at Kensington Mine's plan,* Juneau Empire (November 3, 2002) (Exhibit 15)

[17] Coeur Alaska, Inc. Amended Plan of Operations for the Kensington Gold Project (November 2001), at 217 to 2-18.

including this proviso, S. 1354 substantially increases the harm to public access and uses from the proposed exchange. This zone, from marine waters across the tidelands and upland 500 feet, is some of the most heavily used and valuable lands in the exchange area. A review of Exhibit 1 shows the substantial amount of shoreline in Berners Bay and outside of Slate Cove proper that this bill would effectively close to public access and use.

2. Valuation of Exchanged Land

Under existing law, any exchange of public lands with ANCSA corporations must "be on the basis of equal value." *See* 43 U.S.C. § 1621(f); 16 U.S.C. § 3192(h)(1). Sections 5(d) and 6(b) of the S. 1354 requires the Secretary of Agriculture to "determine" that the lands to be exchanged by Cape Fox and Sealaska are of equal value to the lands the corporations will receive under S. 1354. This provision, however, does not specify how such a determination will be made or if it will be subject to public notice, comment, and environmental review under the National Environmental Policy Act as required by agency regulations. *See* 36 C.F.R. §§ 254.3(c), 254.8, and 254.3(g). It is poor public policy for Congress to exempt this, or any other exchange of public lands, from these basic regulatory requirements.

3. The Bill Could Increase Sealaska's Land Entitlement Under ANCSA

Senate Bill 1354 proposes to trade roughly 12,000 acres of high-value public wildlands in Berners Bay to Cape Fox and Sealaska Corporations in exchange for approximately 3,000 acres of Cape Fox's mostly clearcut private lands and 8,104 acres of assorted Sealaska subsurface lands. Although section 7(d) claims that "[n]othing in this Act shall be construed to change the total acreage of land entitlement of Cape Fox or Sealaska under ANCSA," this same section explicitly exempts the lands received by Sealaska under section 6 from being charged against Sealaska's ANCSA entitlement. Under Section 6(b), Sealaska would receive approximately 9,329 acres of surface and subsurface lands and relinquish approximately 8,104 acres of subsurface lands. Yet, as drafted, S. 3154 would not charge Sealaska for the excess 1,225 acres lands it receives in exchange for its subsurface acres against its entitlement under ANCSA. Consequently, the bill, in effect, reopens ANCSA by increasing the acreage of the Tongass National Forest that Sealaska is entitled to collect under that law.

4. Replacement of Old Growth Reserves vis a vis Old Growth Forest

Section 7(h) directs the Secretary of Agriculture to "add an equal number of acres of old growth reserves on the Tongass National Forest as are transferred out of Federal ownership as a result of this Act." "Old growth reserve" refers to areas of old growth forest specifically designated and set aside by the 1997 Tongass Land Management Plan to provide habitat for old-growth-dependent wildlife. If the exchanges under this bill occur, the Forest Service would be required to replace only 3,625 acres of old growth reserve, even though, in actuality, at least twice that amount of old-growth forest will be exchanged.[18] This represents a net loss of productive old growth forest on the Tongass.

5. Other Concerns

Senate Bill 1354 completely exempts the lands subject to this exchange from the requirement in Forest Service regulations for "market value" appraisals. *Compare* Section 7(a) of S. 1354 *with* 36 C.F.R. 254.9.

In addition, S. 1354 modifies agency exchange procedures by mandating the conveyance of lands and interests identified by Cape Fox and Sealaska. Existing Forest Service regulations, however, recognize that land exchanges are supposed to be discretionary, voluntary real-estate transactions and completed only if the Forest Service determines that the exchange will serve the public interest. 36 C.F.R. § 254.3(a)-(b). Clearly, S. 1354 is a poor substitute for the requirements of Forest Service regulations and appears more intent on furthering private interests than satisfying the broader public interest.

CONCLUSION

Berners Bay is important to residents of Juneau and other Lynn Canal residents because of its hunting, fishing, recreation, cultural and spiritual values. Privatizing pristine national forest lands here would limit public access to hunting, fishing and cultural resources. This proposed land trade will also facilitate the private develop-

[18] *See* USFS, Final Supplemental EIS for Tongass Roadless Area Evaluation for Wilderness Recommendations, Vol. 11, Appendix C—Part 1 at p. C1-475 (2003).

ment of the Kensington Gold Mine at the expense of existing uses of, and environmental harm to, Berners Bay's incredible natural resources.

Real problems with ANCSA should be solved by soliciting public input from all concerned Alaskans, respecting all forest users, and maintaining the integrity of the Tongass National Forest and other federal lands. We urge the committee to stop S. 1354 in its tracks. Trades, such as proposed in S. 1354, should not be mandated by Congress but enacted through existing administrative mechanisms and based upon the presumption that the greater public good will be served.

Thank you for this opportunity to comment on this legislation important to Southeast Alaskans.

STATEMENT OF BUCK LINDEKUGEL, CONSERVATION DIRECTOR, SOUTHEAST ALASKA CONSERVATION COUNCIL, ON S. 1421

The following statement is submitted on behalf of the Southeast Alaska Conservation Council (SEACC). SEACC respectfully requests that this written statement and accompanying materials be entered into the official record of this Subcommittee hearing.

Founded in 1970, SEACC is a grassroots coalition of 18 volunteer, non-profit conservation groups made up of local citizens in 14 Southeast Alaska communities that stretch from Ketchikan to Yakutat. SEACC's individual members include commercial fishermen, Alaskan Natives, small timber operators, hunters and guides, and Alaskans from all walks of life. SEACC is dedicated to preserving the integrity of Southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable uses of our region's resources.

Senator Lisa Murkowski introduced S. 1421 on July 16, 2003 to authorize the subdivision and dedication of restricted land by Alaska Natives. This bill is intended to provide Alaska Natives who own allotments "with the same obligations and privileges of other private landowners in Alaska." 149 Cong. Rec. S9503 (July 16, 2003).

In general, SEACC does not object to this legislation. Our primary concern, however, is the effect of this legislative proposal on Native allotments within Conservation System Units (CSU), as defined by section 102 of ANILCA. 16 U.S.C. §3102. In addition, other critically important national interest lands protected by Congress that are not CSUs, including legislated LUD II lands protected in their natural state "in perpetuity" by Congress in the 1990 Tongass Timber Reform Act, may also contain Native allotments.

In the past, Congress has expressly recognized a policy of acquiring private lands and interests in land within CSUs on the Tongass. In the Greens Creek Land Exchange Act of 1995, Congress specifically authorized the Forest Service to use the first $5,000,000 in royalties, received by the United States from the sale of minerals from the development of subsurface lands on specified lands within the non-wilderness portion of the Admiralty Island National Monument to acquire private lands, including Native Allotments, within this and other Tongass CSUs.

We are concerned that, as drafted, S. 1421 would allow Native owners of allotments in CSUs to subdivide these allotments, and thereby complicate and possibly frustrate, Congressional intent to reacquire and manage these inholdings as part of the CSUs. We urge the Subcommittee to clarify that the right to subdivide and dedicate Native allotments under this bill is not intended to apply to those Native allotments in CSUs, or other critically important national interest lands that were protected in their natural state by Congress "in perpetuity" but are not CSUs, specifically the legislated LUD II lands in the 1990 Tongass Timber Reform Act.

Thank you for this opportunity to submit this statement on this important legislation.

STATEMENT OF BUCK LINDEKUGEL, CONSERVATION DIRECTOR, SOUTHEAST ALASKA CONSERVATION COUNCIL, ON S. 1466

The following statement is submitted on behalf of the Southeast Alaska Conservation Council (SEACC). SEACC respectfully requests that this written statement and accompanying materials be entered into the official record of this Subcommittee hearing.

Founded in 1970, SEACC is a grassroots coalition of 18 volunteer, non-profit conservation groups made up of local citizens in 14 Southeast Alaska communities that stretch from Ketchikan to Yakutat. SEACC's individual members include commercial fishermen, Alaskan Natives, small timber operators, hunters and guides, and Alaskans from all walks of life. SEACC is dedicated to preserving the integrity of

Southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable uses of our region's resources.

Senator Lisa Murkowski introduced S. 1466 on July 25, 2003. The scope and complexity of this bill is understandable given that the transfer of Alaska federal lands to Alaska Natives, the State of Alaska, and Alaska Native Corporations is the largest and most complex land conveyance program in the history of the United States. Although Senator Murkowski justifies this legislation as necessary to bring closure to the land entitlement process in Alaska, the bill actually raises a number of very significant environmental concerns and other significant questions which it does not answer. Given these factors, and the relatively short time available to prepare testimony for this field hearing, we offer these preliminary comments for your consideration as you begin your review of this legislative proposal, which would have enormous ramifications for Alaska. We urge you not to rush this bill. Instead, please take a hard look at the wide-ranging consequences of this proposed legislation on federal lands in Alaska.

Will S. 1466 Fast Track The Alaska Land Conveyance Process At The Expense of Legitimate Community Concerns?

As Senator Murkowski explained in her statement when she introduced S. 1466, "[t]he Alaska Land Transfer Acceleration Act of 2003 imposes very strict provisions on [the Bureau of Land Management] to complete land conveyances by 2009 to Alaska Natives, the State of Alaska and to Native Corporations." 149 Cong. Rec. S9976 (July 25, 2003).

Senate Bill 1466 seeks to accomplish this ambitious schedule by substituting the existing open and formal process for determining land entitlements with a process that leaves the public and affected communities in the dark. Section 106 authorizes the Secretary of Interior to negotiate binding, written agreements with the State of Alaska with respect to any subject that may assist in completing the conveyance of federal land to the State, including the exact number and location of acres. Section 212 similarly gives the Secretary authority to negotiate agreements with Native corporations concerning any issue that may help complete the conveyance process, including the amount and location of the corporations remaining entitlements.

We agree that it may make sense to allow for negotiations and informal agreements to help resolve entitlement issues with the State of Alaska and Native corporations. The process set up by Sections 106 and 212, however, raises serious concerns because neither section provides for public participation nor binds the Secretary's authority to restrictions that otherwise apply to State and Native selections under the Statehood Act, the Alaska Native Claims Settlement Act (ANCSA), the Alaska National Interest Lands Conservation Act (ANILCA), or other laws. One such limitation is the limitation on conveyances of lands within Conservation System Units (CSU), as defined by section 102 of ANILCA, 16 U.S.C. § 3102. *See* 16 U.S.C. § 3209. Additionally, S. 1466 should be amended to safeguard other critically important national interest lands protected by Congress that are not CSUs, including legislated LUD II lands protected in their natural state in perpetuity by Congress in the 1990 Tongass Timber Reform Act.

We can not emphasize enough the importance of assuring that the land conveyance process is open to public participation. We urge the Subcommittee to assure that efforts to speed up and complete land conveyances under the Statehood Act and ANCSA do not come at the expense of legitimate community concerns about the effect of such land conveyances on traditional community uses of affected public lands. Both sections 106 and 212 should, at a minimum, provide for publication of proposed agreements in the Federal Register and a 90-day public comment period.

Section 105—The University of Alaska's Entitlement

Section 105(a) and (b) of S. 1466 declares the University of Alaska's remaining land entitlement to be 456 acres as of January 1, 2003, and increases that entitlement to reflect the reconveyance of any land to the United States to accommodate conveyance of Native allotments. We understand that BLM estimates there to be approximately 1,200 acres of these reconveyed lands. Section 105(b) authorizes the State, on behalf of the University, to select any isolated tract of public land that is vacant, unappropriated and unreserved, other than BLM lands withdrawn under Section 17(d)(1) of ANCSA.

An earlier draft of S. 1466 required notice of the State's selections on behalf of the University of Alaska to be published in a local newspaper and subject to public comment, with those who commented entitled to notification of a final decision. We are troubled that Section 105(c) of S. 1466 no longer contains these requirements. As amended, the University could take title to "high value" lands within the Tongass and Chugach National Forests for purposes of development without giving

local communities and Alaskans an opportunity to voice legitimate concerns about the effects of such conveyances on their uses of such lands.

Conveyance Of Land Entitlements Under Section 14(h)(8) of ANCSA

Section 14(h) of ANCSA established a two million acre pool of lands from which several categories of entitlement were to be met, including the conveyance of cemetery sites and historical places, land entitlements for the urban Native corporations created by ANCSA, and Native allotments. According to section 14(h)(8), the remainder of lands not otherwise conveyed under this section were to be allocated and conveyed to the eligible Regional Corporations upon the basis of populations.

Section 207 of S. 1466 creates two new alternative methods for finalizing acreage entitlements under Section 14(h)(8) of ANCSA. One method is the irrevocable election by a Regional Corporation, within one year of enactment, of the corporation's percentage share of 255,000 acres, regardless of the actual acreage the corporation may have been eligible to receive. No basis is provided for this specified acreage; it is significantly higher than the BLM's estimate last summer of 180,000–200,000 acres remaining in the pool of entitlement lands to be conveyed to the Regional Corporations.[1] We are concerned that the 255,000 acres specified in S. 1466 is an overly large estimate of the corporations' remaining entitlement under 14(h)(8). For example, S. 1466 would greatly increase the allocation of lands Sealaska, the Regional Corporation for Southeast Alaska, could be conveyed from Tongass National Forest Lands. If Sealaska chooses this method, its remaining entitlement to lands in Southeast Alaska would be 55,590 acres, significantly higher than the 39,000 to 43,000 acres estimated by BLM in 2002.

As an alternative method to taking its percentage share of the 25,000 acres specified above, Section 207 would allow Sealaska to irrevocably elect, within one year, to enter into good faith negotiations with the Secretary of Interior to settle its final 14(h)(8) entitlement based on the parties' estimate of the number of acres to which the corporation will be entitled. This negotiation must be completed within two (2) years or the corporation must wait to resolve its 14(h)(8) entitlement until administration of the entire 14(h) program is completed, the original method adopted by Congress in ANCSA. Of greatest concern, the negotiations under this method would not be subject to prior notice, the opportunity for public review, or environmental review under the National Environmental Policy Act (NEPA).

Section 208 of S. 1466 allows the Secretary of Interior to withdraw additional lands if a Regional Corporation does not have enough valid selections on file to fulfill its remaining entitlement from within the boundaries of lands originally withdrawn by BLM for Native corporation selections. This section prohibits the Secretary from withdrawing lands located within the boundaries of a conservation system unit (CSU), such as wilderness areas designated on the Tongass under ANILCA and the Tongass Timber Reform Act. This limitation does not, however, protect other critically important national interest lands that were protected in their natural state by Congress "in perpetuity" but are not CSUs, specifically the legislated LUD II lands in the 1990 Tongass Timber Reform Act. Safeguarding these key lands was strongly supported by Alaskans—including many communities, the State of Alaska, commercial fishing groups, tourism groups, Native Alaskan organizations, and many others. *See* Exhibit 2. Consequently, S. 1466 must be amended to exclude all Congressionally designated lands on the Tongass.

Alaska Land Claims Hearings and Appeals

Section 501 of S. 1466 authorizes the Secretary of Interior to establish a hearings and appeals process for land transfer decisions issued by BLM regarding Native, Community, State, or University land selections in Alaska. Of greatest concern to SEACC, this section allows the Secretary to avoid the public process of notice and comment ordinarily applicable to agency promulgation of regulations and exempts the regulations from NEPA review. Although it is reasonable to establish an Alaska hearings unit to handle all Alaska appeals, creating an entirely new appeals process rather than providing more funds for the existing Interior Board of Land Appeals appears unreasonable to us.

Some Important Questions That Need Answers

1. Exactly how many of CSUs are potentially affected by this bill?
2. Were not the University of Alaska's remaining land entitlements subsumed under the Alaska Statehood Act or Section 906(b) of ANILCA?

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[1] *See* Letter from United States Department of Interior, Bureau of Land Management, Alaska State Office to McNeil, President and CEO of Sealaska Corporation (July 2, 2002) (attached as Exhibit 1).

Note: The exhibits have been retained in subcommittee files.

3. How did BLM determine that 255,000 acres of land was available for reallocation to the Regional Corporations under Section 14(h)(8) of ANCSA?

4. What is the control date used for determining entitlements under this bill? Is it the date of the original entitlement or enactment of this legislation? What effect will either date have on the lands available for conveyance under this bill?

5. Can surplus federal lands and properties be substituted for some of the remaining land entitlements? If so, how much surplus lands and properties are available and what is the value of these lands and properties?

6. What were the reasons for selecting 2009 as the target date for completion of the conveyance of remaining land entitlements?

7. How long did it take other states to receive their land entitlements? How many acres of federal land were those states entitled too?

In conclusion, we respectfully request the Subcommittee to carry out a deliberate and careful scrutiny of this complex piece of legislation and resolve our unanswered questions, as well as those posed by others. We further urge the Subcommittee to assure that efforts to speed up and complete land conveyances under the Statehood Act and ANCSA do not come at the expense of legitimate concerns of local communities and residents about the effect of such land conveyances on traditional community uses of affected public lands.

Thank you the opportunity to make preliminary comments on this proposed legislation.

HYAK MINING COMPANY, INC.,
Juneau, AK, August 5, 2003.

Hon. LARRY CRAIG,
Public Lands and Forest Committee, Senate Energy Committee, Washington, DC.

DEAR SENATOR CRAIG: Hyak Mining Company is a corporation, based in Juneau, Alaska that has been working to redevelop the mines in the area of Berners Bay, since 1978 when we restaked the former Jualin Mine. The relationships of Hyak's owners to the area reach back to 1891 when the great grandfather of the majority owners of Hyak discovered and staked the Comet mine now part of the Kensington mine property.

Since 1978 we have been working diligently to explore for and develop the mineral deposits in that area. Hyak presently owns outright or has interests in 412 acres of patented mining claims and approximately 500 unpatented federal mining claims in the Berners Bay district. The unpatented claims, with few exceptions, are under lease to Coeur Alaska and are located on lands subject to the exchanges between the Cape Fox and Sealaska Corporations and the U.S. Forest Service proposed in Senate Bill 1354.

Hyak has been generally apprised of the S. 1354 land exchange proposals from the initial stages. We have concluded that the proposed exchange is vital to the economic redevelopment of thee past producing mines in the Berners Bay area. As long as our existing rights are protected, Hyak Mining Company is in full support of these proposed exchanges.

Redevelopment of the Berners Bay area mines will be enhanced by having neighboring private land owners who's interests are more closely aligned with the owners of the patented lands and unpatented claims in the area than the U.S. Forest Service. Hyak is looking forward to working with Coeur Alaska, Cape Fox Corporation and Sealaska to create a mining development district and redevelop the Kensington and Jualin mines. This will be a very important step toward bringing new investment and jobs to a region of Alaska that is in critical need of economic diversification. Hyak believes Coeur Alaska has developed a workable operations and transportation plan for redevelopment in the area. This plan is minimally intrusive from a environmental standpoint, and the safest and most reliable from an operations perspective.

Thank you for your consideration of these comments. Hyak Mining Company urges the Committee to give favorable consideration to S. 1354.

Sincerely

E. NEIL MACKINNON,
President.

CENTRAL COUNCIL,
TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA,
August 6, 2003.

Hon. LISA MURKOWSKI,
Senate Subcommittee on Public Lands and Forest, Dirksen Office Building, Washington, DC.

DEAR SENATOR MURKOWSKI: I request that you accept this letter as the testimony of the Central Council Tlingit and Haida Indian Tribes of Alaska on the proposed legislation entitled the "Alaska Land Transfer Acceleration Act of 2003." I request that my testimony be included in the official record of this hearing. I appreciate this opportunity to give testimony on S. 1466.

INTRODUCTION

The Department of the Interior (DOI) proposes by its Alaska Land Transfer Acceleration Act of 2003 to transfer land in Alaska to the State and Native Corporations. Overall the goal of the proposed legislation is to ensure that the State of Alaska and Native Corporations obtain patents to land. This goal would be admirable except that it eliminates existing property rights of Native allotment applicants. This is justified according to a Bureau of Land Management (BLM) Memo,[1] because Native allotment applicants (or heirs) are the cause of the delays in finalizing Native allotments. It is true that until BLM completes the processing of Native allotments the transfer of some land to the State and Native Corporations is delayed. It is untrue that Native allotment applicants (or heirs) are the cause of the delay. Instead, the blame rests with the inefficient and lengthy processes used by BLM, the Office of Hearings and Appeals, and the Interior Board of Land Appeals (IBLA). The finalization of allotments are delayed by numerous factors which are summarized as follows:

- Many approved applications sit for years awaiting surveys even though some allotments could be certified without surveys.
- Many applications now require hearings because BLM continuously develops and applies stricter standards to prove use and occupancy. One example is an internal memo issued by BLM State Director Cherry in 1999 which set stricter evidentiary standards making it near impossible for an allotment to be approved on the basis of sworn affidavits and thus more hearings are required.
- Many applications are delayed due to BLM's yearly reorganization when allotment case files are transferred from one employee to another resulting in significant delays because employees must become familiar with a new set of cases each year.
- Many applications sit for years awaiting a hearing, because hearings are generally conducted only in the summer months thereby severely limiting the number of hearings held each year. This delay adds years to the finalization of allotment applications. For example, an allotment case remanded to the BLM in 1987 for a hearing was not heard until 2002. Another example is a hearing was held in 2002 in a case where the application was filed in 1909.
- Many applications sit for years waiting to be processed after favorable hearing decisions or favorable appeal decisions.
- Many applications sit for years waiting for an appeal decision from the IBLA. The average length of time it now takes the IBLA to issue a decision is five years. Many applications are not legislatively approved because the State of Alaska filed a protest. However, many of these applications could be legislatively approved if settlements were reached allowing the State to withdraw its protests. BLM should identify these potentially legislatively approvable applications and with BIA, facilitate settlement.

Given that DOI has caused the delays in processing Native allotment applications, it is unconscionable to sacrifice Native allotments for the sake of finalizing the state and corporation land selections. But, that is the effect of S. 1466.

Before S. 1466 proceeds further, DOI must consult with the Tribes in Alaska. Many of the Tribes have compacts or contracts with the Bureau of Indian Affairs to assist Alaska Natives throughout the allotment application process. Therefore, the Tribes' expertise in land matters would be enormously helpful in developing and implementing solutions to finalizing land claims without sacrificing Native allotments. Moreover, meaningful consultation with the Tribes on this proposed legisla-

[1] Memorandum from BLM, Alaska State Director to Assistant Secretary, Land and Minerals Management (May 7, 2003).

tion is mandated by Executive Order 13175.[2] It is not too late; the Tribes can be consulted and will provide recommendations for amendments to this proposed legislation.

BACKGROUND

The Purpose of the Native Allotment Act of 1906 Was To Grant Title to Alaska Natives of Land Necessary for Subsistence

Before I provide my analysis of S. 1466, a brief discussion of the Alaska Native Allotment Act may be helpful. In 1906, Congress enacted the Alaska Native Allotment Act because Native people in Alaska were starving to death due to the encroachment of lands necessary for subsistence.[3] Prior to 1906, Alaska Natives could not get title to land they used to obtain the necessary resources for food, shelter and clothing. Congress intended that the Secretary would convey allotments to Alaska Natives to preserve the subsistence traditions, not destroy them. Protecting traditional uses of land and resources remains equally important today.

The legislative history of the Allotment Act establishes that prior to the passage of the Act, non-native encroachment on Native lands caused widespread devastation which the federal government failed to prevent even though it had a duty to protect Native use and occupancy.[4] The government's failure resulted in the starvation of Native men, women, and children throughout Alaska. This was such an acute problem that President Roosevelt sent a special investigator to Alaska in 1903 in an attempt to alleviate the suffering and death, caused the inability of Native people to access and harvest the traditional resources.[5]

It must be remembered that by 1903, the Alaskan "gold rush" had been underway for almost ten years. Congress knew the heavy traffic through Alaska to the goldfields greatly affected the traditional land uses and possessory rights of Alaska's Native people. There was also substantial traffic from the salmon canneries, oil production, copper mining and commercial logging. These were all activities that took a heavy toll on the same resources that provided food, shelter and clothing to Native Alaskans. The solution was the Alaska Native Allotment Act that carved out allotments of 160 acres of land so that crucial subsistence activities could continue undisturbed for generation after generation.

Until 1970, the Allotment Act Was a Well Kept Secret

Unfortunately, the government agencies responsible for carrying out the allotment program did not agree that conveyance of allotments was necessary. Consequently, in the first fifty-four years of the Alaska Native Allotment Act only 78 allotments were granted,[6] and as of 1970, only 245 allotments had been conveyed.

In 1970, when repeal of the Alaska Native Allotment Act was imminent an effort was finally undertaken to implement the allotment program and assist those desiring to file applications. Because of these efforts, approximately 10,000 allotment applications were filed and pending before the repeal of the Act in 1971 by the passage of the Alaska Native Claims Settlement Act (ANCSA).[7] ANCSA contained a provision that saved pending allotment applications.

Considering that there were far more than 10,000 Alaska Natives in the state in 1971, the 10,000 allotment applications filed by 1971 were only a fraction of what should have been submitted. The problem has never been that there were too many applications filed but rather the process used by the government for deciding Native allotment cases was lengthy, complicated and costly. This same process was not used for homestead and other similar claims for land in Alaska and consequently those other claims were finalized long ago.

In 1980, Congress Attempted To Streamline the Allotment Adjudication Process But It Failed

In 1980, Congress again tried to provide finality to Native allotments by the passage of Section 905, of the Alaska National Interest Lands Conservation Act

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[2] 65 Fed. Reg. 67249-67252 (November 9, 2000).

[3] *Report on Conditions in Alaska,* by James W. Witten, Special Inspector, General Land Office (1903).

[4] *Pence v. Kleppe,* 529 F.2d 135, 141 (9th Cir. 1976).

[5] *Report,* James W. Witten, at 32-33.

[6] David Case & David Voluck, Alaska Natives and American Laws 110 (2d ed. 2002) (citing Bureau of Indian Affairs 1956-1993 Annual Caseloads Report, Summary of Native Allotment Numbers (Juneau 1994)).

[7] 43 U.S.C. 1617.

(ANILCA).[8] Section 905 was designed to remove many of the administrative barriers to obtaining an allotment by authorizing the Secretary of Interior to "legislatively" approve some, but certainly not all, of the pending allotments. Legislative approval eliminated the need for costly and lengthy administrative hearings. The will of Congress was thwarted when the State of Alaska protested some 6,000 applications as a way to prevent legislative approval. It is unknown how many allotments have been legislatively approved. Allotments not legislatively approved, require proof that the applicant's use of the land was substantially continuous for more than 5 years, potentially exclusive of others. There are approximately 4,000 pending allotment parcels requiring adjudication of use and occupancy.[9] Some of these very old cases in need of hearings will be further complicated or unfairly denied because many of the applicants and first hand witnesses have died.

Many have failed to obtain allotments because BLM has interpreted the Allotment Act in a restrictive and harsh manner. For example, until a 1976 federal court decision, approximately one thousand applications were denied because the government refused to provide Native allotment applicants with a due process hearing to determine facts in dispute. Some of these applications were reopened but too many remain closed even today.

Although some of the restrictive interpretations and policies of earlier administrations have been reversed by the federal courts and by Secretarial Order, many past interpretations and policies continue. More than any other factor, the government's restrictive interpretations have caused the delay in processing Native allotments. To illustrate this point, one need only consider that in Alaska there are no pending homestead applications nor did the processing of those applications require lengthy and costly adjudication.

Most importantly, there are allotment applications that BLM closed unlawfully which have not yet been reinstated but should be. Eliminating the right to reinstate those applications would be a second denial of due process.

S. 1466 ELIMINATES IMPORTANT RIGHTS OF NATIVE ALLOTMENT APPLICANTS THAT HAVE BEEN SECURED BY FEDERAL LAW, THE U.S. CONSTITUTION AND DECISIONS OF THE INTERIOR BOARD OF LAND APPEALS

S. 1466 eliminates important due process safeguards that were obtained for Native allotment applicants after years of litigation before the IBLA and federal courts. Further, S. 1466 forever eliminates the opportunity of allotment applicants to resurrect applications that were lost through no fault of the applicant. S. 1466 also forever eliminates the opportunity to reinstate those applications that BLM closed in violation of the applicants' constitutional rights.

Congress Provided Allotment Applicants the Right To Amend Erroneous Legal Descriptions of Allotments Because the Government Caused the Errors

Section 304(f)(5) eliminates the right of Native allotment applicants to amend an allotment description. It is important to understand that the right to amend the legal description of an allotment arose from the recognition by Congress that a significant percentage of allotment applications contained errors that were not the fault of the applicants.[10]

The right to amend allotment descriptions under Section 905(c) of ANILCA is allowed only in very limited situations; it can be applied only in situations where it is proven the land as described in the application is not what the applicant intended to apply for as the allotment. Thus, an acceptable amendment would describe the land that the applicant originally intended to claim as the allotment. Proof of the applicant's intent is now submitted to BLM by sworn affidavits or by testimony during a hearing.

It is well known and accepted that in 1970-1971, the BIA in Alaska sent the handwritten allotment applications to locations in California and elsewhere for typing. The typed applications were returned to BLM but many contained erroneous legal descriptions; either the location was incorrect or the acreage amount was incorrect. Thus, the descriptions of some allotments must be amended to correct mistakes the government made in the first place.

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[8] 43 U.S.C. 1634.

[9] There are approximately 2,800 applications, but each application may have up to four parcels. 1.6 is the average number of parcels in an application. *A Report Concerning Open Season for Certain Native Alaska Veterans for Allotments,* Prepared for Congress by the Department of the Interior in Response to Section 106 of Public Law 104-42, p. 6 (June 1997).

[10] S. Rep. No. 413, 96th Cong., 2d Sess. 237-38, reprinted in 1980 U.S. Code Cong. & Ad.News 5070, 5181-82.

Consequently, if the right to amend is eliminated as contemplated by S. 1466, it is likely that some applicants will lose their allotments because they will not be able to prove use and occupancy of land they did not originally intend to apply for. It is also possible that even if they received land they did not intend to apply for, valuable improvements elsewhere on land they did intend to apply for would be lost.

Congress Provided for Allotment Applicants' Right To Reinstate Allotments That Were Relinquished Unknowingly and Involuntarily

Section 304(f)(3) of S. 1466 eliminates the right of Native allotment applicants to request reinstatement of relinquished allotment land even if the relinquishment is invalid. However, the right to reinstatement of an allotment on the grounds that a relinquishment is invalid is addressed in Section 905 of ANILCA.[11] Further, the IBLA holds that BLM must reopen a relinquished allotment case and determine if the relinquishment is invalid.[12] An invalid relinquishment under the IBLA decisions is one that was unknowingly or involuntary.[13] The right to get a case reopened so the government can investigate whether a past relinquishment is valid is an important right because in these cases the applicant may have been wronged once already and simple fairness dictates wrongs be righted, not compounded.

Allotment Applicants Have a Constitutional Right to Reinstatement of Allotments That Were Closed Without an Opportunity for a Hearing

Sections 304 (f)(1) and (f)(3) of S. 1466 eliminates all rights to reinstate closed allotment cases. However, federal courts have already ruled that applicants (or heirs) have the right to get closed allotment cases reinstated if BLM closed the case without an opportunity for a hearing because such a closure was in violation of the applicants' due process rights.[14] Before these federal court decisions, BLM routinely rejected and closed allotment cases whenever it believed there was insufficient evidence to prove the applicant's qualifying use of the land claimed for an allotment. The applicants never had a chance to prove otherwise.

Until 1976 after the federal court decision requiring BLM to provide applicants with hearings, BLM had never allowed an opportunity for the applicant to present evidence of qualifying use to an impartial decision maker.Thus, hundreds of allotment applications were closed in violation of due process guarantees. Too many allotment cases remain closed today[15] because of BLM's failure to reopen closed cases unless "the applicant, legal representative or BIA, requests reinstatement and presents clear and compelling evidence that the file was erroneously closed."[16] Eliminating the right to reinstate allotment cases that were closed in violation of the applicants' due process rights would only compound the original violation and lead to certain litigation. Although, the U.S. Supreme Court has repeatedly held that Congress has plenary authority over Indian affairs, which would include Native allotment matters, that Court has also held that Congress when exercising its plenary authority must comply with guarantees of the U.S. Constitution,[17] such as the due process clause and the just compensation clause.[18] Accordingly, Congress should remove Sections 304(f)(1) and (f)(3) from S. 1466. Instead, BLM should reinstate those unlawfully closed cases on its own initiative.

Allotment Applicants Now Have a Right To File Reconstructed Allotment Applications Where the Government Lost Their Original Applications and This Right Includes a Hearing To Present Evidence That the Original Application Was Timely Filed

Section 304(f)(1) eliminates all rights to file reconstructed applications in cases where the government lost the original applications. Presently under rulings of the IBLA applicants (or heirs) have the right to file reconstructed applications in cases where the government lost their original application, and the BLM has a cor-

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[11] 43 U.S.C. 1634(a)(6).
[12] *Heirs of William Lisbourne,* 97 IBLA 342 (1987).
[13] *Matilda Johnson,* 129 IBLA 82 (1994).
[14] *Pence v. Kleppe,* 529 F.2d 135 (9th Cir. 1976); *Pence v. Andrus,* 586 F.2d 733 (9th Cir. 1978).
[15] A recent internal audit by the Central Council of Tlingit and Haida Indian Tribes of Alaska discovered that 66 percent of the allotment cases under its jurisdiction were closed by BLM in violation of the applicants' due process rights. These cases have never been reopened by BLM but the Tribe has begun work for reinstatement of these cases.
[16] BLM Alaska Native Allotments Handbook, Section II at 13 (1991).
[17] *United States v. Sioux Nation of Indians,* 448 U.S. 371, (1980). *See also, Delaware Tribal Business Committee v. Weeks,* 430 U.S. 73, 84 (1977).
[18] *See, Babbitt v. Youpee,* 519 U.S. 234 (1997); *Bolling v. Sharpe,* 347 U.S. 497 (1954); *United States. v. Antelope,* 430 U.S. 64191977); *Hodel v. Irving,* 481 U.S. 704 (1987).

responding duty to investigate those claims and provide the opportunity for an evidentiary hearing.[19]

Unfortunately, Section 304(f)(2) eliminates this right and instead allows BLM to reject previously filed reconstructed applications unless the BLM's file already contains the following evidence:

1. the name of the person who took the original application and the agency that person worked for;
2. the month and the year the original application was submitted;
3. the specific address where the original application was submitted;
4. two affidavits attesting to the applicants' qualifying use; and
5. two affidavits from non-family members attesting that they know the original applications were filed.

The long list of evidentiary requirements as set forth in Section 304 (f)(2) effectively creates a new standard to prove the government lost an allotment application. In other words, the amount and types of evidence in this list far exceeds what the IBLA now requires to prove an application was lost.[20] Thus, much of the newly required evidence is currently not in BLM's record for existing cases because it has never before been required. It will be impossible for existing cases to meet this new standard because the new standard becomes effective when S. 1466 is enacted so there will be no time for applicants to supplement BLM's records. It is ironic that BLM's repeated attempt to apply the harsh standard described in Section 304(f)(2) has repeatedly been reversed by the IBLA.[21]

Allotment applicants with existing reconstructed applications on file with BLM have never been informed of this new and excessive evidentiary standard. Considering that the applications were lost in 1970-1971, the details required by the new standards some thirty years later might be impossible to meet. This provision is not only grossly unfair but will surely result in costly and lengthy litigation.

Allotment Applicants Now Have a Right to a Hearing Conducted by an Impartial Administrative Law Judge and Governed by Existing Federal Regulations

Section 501 of S. 1466 may eliminate the allotment applicants' right to a hearing conducted by an impartial administrative law judge and governed by federal regulations. Section 501 establishes a new but undefined process for hearings that may or may not be governed by existing federal regulations.Additionally, under the language of the proposed legislation may even be conducted by any employee of the Department of the Interior including BLM employees.

Currently, applicants (or heirs) have a right to a hearing to determine certain factual issues in their allotment cases, and the hearings are conducted by impartial judges from the Office of Hearings and Appeals under rules set by federal regulations. These hearings meet due process guarantees.[22] Unless the Department of the Interior establishes a duplicate hearings and appeals process, it is unlikely that due process guarantees will be met. Further, it is certain that a duplicate hearing system will only add more cost and time to the already lengthy hearing process.

It is obvious to those knowledgeable about Native allotments that the allotment hearings process is unduly slow. Nevertheless, resolution of this problem should not unfairly deprive applicants of impartial hearings governed by existing federal regulations that are familiar and lend certainty to the hearings process.

One of the reasons the hearings process is unduly slow is that the Office of Hearings and Appeals generally schedules hearings only in the summer months which drastically reduces the total number of allotment hearings that occur each year. For example, in the year 2003 less than 10 allotment hearings will occur in Alaska.

To improve the hearing process, a better alternative would be for Congress to authorize and fund the Office of Hearings and Appeals to open an office in Anchorage and increase the number of existing administrative law judges. These judges could hold allotment hearings year-round and could do other necessary work such as probate matters. Moreover, these judges could continue to conduct hearings under current federal regulations which would also save money, time and uncertainty in the processing of allotment applications.

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[19] *Timothy Afcan, Sr.,* 157 IBLA 210 (2002).

[20] *Alice Brean v. United States,* 159 IBLA 310 (2003) (holding that the IBLA will set aside BLM's rejection of a reconstructed allotment if the Board decides there is a question of fact whether the application was timely filed and BLM has not provided the applicant with a hearing required by the due process clause).

[21] *Timothy Afcan Sr.,* 157 IBLA at 220; *Alice Brean,* 159 IBLA at 323.

[22] *Pence v. Andrus,* 586 F.2d 733 (9th Cir. 1978).

Allotment Applicants Now Have a Right to an Appeal Before the IBLA Is Governed by Federal Regulations

Section 501 also establishes a new appeals process that may or may not be governed by existing federal regulations and may be decided by any employee of the Department of the Interior including BLM employees. However, applicants (or heirs) now have a right to appeal BLM's decision to the IBLA which is staffed by impartial administrative law judges governed by federal regulations.

Although many appeals take the IBLA more than several years to decide, the resolution of this problem should not unfairly deprive allotment applicants' access to an impartial appeals Board that has the expertise to decide allotment issues. It could take a new appeals body years to gain the expertise necessary to issue thorough and competent appeals decisions. In addition, if the new appeals body did not have the expertise to render a thorough and competent decision which an appellant has a right to receive, it is likely federal courts would remand the incompetent decisions. This would only add to the years it now takes to receive an appeal decision.

A better alternative to resolve the problem of the delays at the appeal level is for the IBLA to receive sufficient resources that would allow the Board to decide pending and future appeals in a more efficient and timely manner. This solution would also prevent the unnecessary duplication and excessive costs that would occur under the new appeals body contemplated by S. 1466. Moreover, it would save time because the IBLA already has the expertise to render competent appeal decisions and the necessary federal regulations governing the IBLA appeal process are already in place.

CLOSING

Congress enacted the Alaska Native Allotment Act in 1906 so that Alaska Natives would obtain title to land and resources that had fed, clothed and sheltered them for thousands of years.Many Alaska Natives still wait for that promised title.

We urge this Subcommittee to return the proposed legislation to DOI with instructions to conduct meaningful consultation with Tribes in Alaska. After such consultation, we will submit amendments to S. 1466 that will protect rights to Native allotments while eliminating many of the factors that now delay finalizing allotment cases.

Respectfully submitted,

EDWARD K. THOMAS,
President.

NATIVE VILLAGE OF SELAWIK,
SELAWIK IRA COUNCIL,
Selawik, AK, August 6, 2003.

Hon. LISA MURKOWSKI,
Senate Subcommittee on Public Lands and Forest, Dirksen Office Building, Washington, DC.

Subject: Alaska Land Transfer Acceleration Act of 2003

DEAR SENATOR MURKOWSKI: On behalf of the Native Village of Selawik, this letter is to express our support in the Testimony of Edward Thomas, President, Central Council Tlingit and Haida Indian Tribes of Alaska.

If you have any questions, please contact me at (907) 484-2165 or fax to (907) 484-2226.

Sincerely,

CLYDE RAMOTH,
President.

SITKA TRIBE OF ALASKA,
Sitka, AK, August 6, 2003.

Hon. LISA MURKOWSKI,
Senate Subcommittee on Public Lands and Forests, Dirksen Office Building, Washington, DC.

Re: Testimony of Lawrence Widmark, Tribal Chairman for Sitka Tribe of Alaska on Senate Bills 1421 and 1466

DEAR SENATOR MURKOWSKI: I write to provide written testimony on behalf of Sitka Tribe of Alaska regarding Senate Bills 1421 (the Alaska Native Allotment

Subdivision Act) and 1466 (the Alaska Land Transfer Acceleration Act of 2003). Thank you for accepting my testimony on this legislation.

These two bills have significant implications to our Tribal citizens, whose livelihoods tie directly to the lands and waters surrounding Sitka. Sitka Tribe is proud to be a federally recognized tribal government, organized under the Indian Reorganization Act of 1934, as amended. As such, Sitka Tribe appreciates the relationship that our Tribal government has with the federal government, as it reiterates the respected sovereign rights of our tribal government. Particularly, Sitka Tribe takes Executive Order 13175 [1] regarding the Federal responsibility to consult with federally recognized Indian Tribes very seriously. Sitka Tribe is insulted by the lack of consultation regarding these two Congressional bills as directed by the Executive Order. As such, Sitka Tribe requests that the Department of Interior hold consultations on these two very important pieces of legislation immediately.

Sitka Tribe urges the Senate Subcommittee on Public Lands and Forests to consider an alternative way to complete adjudication of federal lands in Alaska other than S. 1466

Sitka Tribe opposes Senate Bill 1466 as written because it seeks to finalize land selections in Alaska by denying Alaska Natives important rights to apply for and receive native allotments. Sitka Tribe would like to initiate its comments on this bill by noting that it supports the testimony of Edward Thomas, of the Central Council of Tlingit and Haida Indian Tribes of Alaska on S. 1466. Additionally, Sitka Tribe is concerned about the current language of Senate Bill 1466 because:

- Senate Bill 1466 fails to address the BLM's failure to diligently adjudicate native allotments over the past thirty years; and rather seeks to punish Alaska Natives by ending their rights to attempt to get title to land in Alaska; S. 1466 legitimizes BLM's practice of stalling native allotment cases by terminating native allotment applicants' chances of receiving allotments where BLM itself took illegal action.
- S. 1466 ignores the fact that Alaska Native allotment applicants are just now receiving the technical assistance required to fully fight for rights to allotments; despite this, S. 1466 proposes to terminate individuals' rights to reopen allotment cases that should have never been closed. Upon a file review of closed allotments in the Sitka area in Spring 2003, Sitka Tribe and Alaska Legal Services staff found six closed allotment cases that were closed erroneously and should be reopened. If S. 1466 becomes law, Alaska Natives who could receive an allotment will be denied this opportunity.
- S. 1466 fails to acknowledge the beneficial nature of native allotments to Alaska Natives and to the Alaska economy. Under current economic conditions, Alaska Natives face great challenges to finding financial security. Having a native allotment is one of the few avenues for Alaska Natives to positively impact the economy and sustain themselves and their families.
- S. 1466 violates the Constitutional rights of native allotment applicants by denying legitimate applicants from receiving due process in the denial of their allotment application, by denying legitimate applications a hearing and by not allowing for judicial review of agency action.
- S. 1466 gives BLM undefined discretion to hold hearings on native allotment applications and would not allow for judicial review of these decisions.

Sitka Tribe is thus primarily concerned that S. 1466 will further stack the cards against tribal citizens who seek to receive native allotments. Sitka Tribe thus asks that if such great rights to be denied allotment applicants that native allotment applicants at least receive a five year period in which to reopen allotment cases that have been illegally closed, and Tribal governments receive additional resources to assist its tribal citizens with such applications.

Sitka Tribe of Alaska opposes Senate Bill 1421

Sitka Tribe believes Senate Bill 1421 is an attempt by the Department of Interior to shirk its trust responsibility to native allottees and townsite owners in Alaska and serves to undermine the rights of native allottees and townsite owners. Native allottees and townsite owners received title to their lands from the federal government, and the federal government has an oversight responsibility over these lands, to ensure that the native owners' property rights are not violated. By consenting to state or local jurisdiction over these otherwise federal pieces of property, the owners stand to have their property rights infringed upon by the State, and the federal government will not have a leg to stand on to contradict these infractions. This is a

[1] 65 Fed. Reg. 67249-67252 (Nov. 9, 2000).

terrible result for restricted property owners in Alaska, as land is of integral importance to them, and this legislation stands to undermine the status of their lands by giving the State jurisdiction to say exactly how big a lot must be and to dictate other details to be in compliance with state or local law.

Sitka Tribe understands that some restricted property owners in Alaska may want to have their subdivisions approved by the state or local authorities in order for their property to be economically viable for them. However, new Congressional legislation granting state control over this issue is not necessary to grant restricted property owners the right to subdivide their land and dedicate public easements. This authority already exists. Further, to address this issue, Sitka Tribe believes that the current regulation allowing for the partition of native allotments, 25 C.F.R. § 152.33, should be amended through consultation with federally recognized tribal governments in Alaska to address this issue. Sitka Tribe contends that restricted properties should be governed and administered under federal law and regulation, and that to enact a bill that says otherwise is a clear violation of the federal government's responsibility towards Alaska Natives.

In closing, I would like to reiterate that Sitka Tribe exists to look after the health, safety, welfare and cultural preservation for approximately 3,100 tribal citizens. Sitka Tribe believes that Senate Bills 1421 and 1466 jeopardize the welfare and culture of our tribal citizens. For this reason, Sitka Tribe opposes these bills as written. If you have any further questions about this testimony, please do not hesitate to contact Jessica Perkins, Resources Protection Director for the Sitka Tribe.

Sincerely,

LAWRENCE WIDMARK,
Tribal Chairman.

Anchorage, AK, August 6, 2003.

DEAR SENATOR MURKOWSKI: I attended the Senate Energy and Natural Resources Committee field hearing today on S. 1354 (the Cape Fox Land Entitlement Act) at the Loussac Library here in Anchorage. At the end of the hearing, you invited comments and said that the comments should be sent to your office to be included in the hearing record. Accordingly, I would like to have this e-mail included in the hearing record.

During the hearing, Mark Rey, Undersecretary of Agriculture, described how the Forest Service would determine equal value for the land that is proposed to be traded. He essentially said that the trade would create administrative efficiencies for the Forest Service. This is bureaucratic myopia at its best. I was surprised that not one word was mentioned about trying to estimate user values.

Having lived in Juneau for several years, I know that the Berners Bay area has high use and value to Juneau area residents. Some of these uses can be measured in monetary terms, such as the economic impact on commercial fishing and outdoor recreation. However, there are other values, such as spiritual values, which are difficult to measure in monetary terms but, nevertheless, need to be included in any estimate of land value.

Fortunately, there are now economic methodologies that can be used to arrive at a more holistic assessment of land value and they should be used here. While this type of analysis may not appear to be as (falsely) precise as a traditional land assessment, it is more accurate in that it looks at the whole iceberg instead of just the more visible tip.

I encourage you to insist that any analysis of land values by the Forest Service place its emphasis on values gained or lost by the public, not convenience to the agency. While administrative efficiencies to the agency should get some consideration, these benefits are often based on ephemeral scenarios. The public would not be served well by any land trade that essentially ignores long-standing values associated with all users.

Sincerely,

GEORGE MATZ.

CHILKAT INDIAN VILLAGE,
Klukwan, AK, August 5, 2003.

Hon. LISA MURKOWSKI,
Senate Subcommittee on Public Lands and Forest, Dirksen Office Building, Washington, DC.

DEAR SENATOR MURKOWSKI: I respectively request that you accept our letter in support of the testimony submitted by President Edward Thomas of the Central Council Tlingit and Haida Indian Tribes of Alaska on proposed legislation entitled the "Alaska Land Transfer Acceleration Act of 2003".

The Chilkat Indian Village has a contract with the Bureau of Indian Affairs to assist Alaska Natives with the allotment application process. The process continues to have long and numerous delays; many of the allotment applications sit inactive for decades, meanwhile the land is usually transferred to other entities such as the State of Alaska, University of Alaska or the Mental Health Trust. Many Native Allotments in the lands surrounding Klukwan, Alaska were properly claimed and an application was properly submitted as early as 1907. However it was not until the 1980's that the hearings for these allotments were completed and the applications were found to be valid. The State of Alaska, University of Alaska, and the Mental Health Trust has continually refused to reconvey the lands back to the Bureau of Land Management, there has been an agreement to reconvey the lands back and then nothing is completed with the transfer process.

Executive Order 13175 mandates meaningful consultation with the Tribes on this proposed legislation. Consultation with the Tribes of Alaska has not taken place in regards to this legislation. Consultation with the Tribes would be mutually beneficial as many of the Tribes in Alaska have contracts or compacts with the Bureau of Indian Affairs to assist Alaska Natives with the allotment application process, therefore the tribes' expertise in land matters would be quite helpful in developing and implementing solutions to finalize land claims without sacrificing Native Allotments.

The Chilkat Indian Village is quite concerned with this proposed legislation, and how it will affect the Native Veterans Allotment process. The Native Veterans of the Village of Klukwan sacrificed their youth for our Great Country, please don't force them to endure one more sacrifice. All of the Native Veteran Allotment Applications that are still pending should be legislatively approved as soon as possible.

We urge the Subcommittee to return the proposed legislation to the Department of Interior with instructions to conduct meaningful consultation with the Tribes of Alaska. After such consultation, the Chilkat Indian Village will request the Subcommittee to amend the proposed legislation so that rights to Native Allotments will not be sacrificed.

We greatly appreciate your time and efforts on our behalf; if we can be of any further assistance please do not hesitate to contact our offices.

Respectfully submitted,

JONES P. HOTCH JR.,
President.

MANIILAQ ASSOCIATION,
Kotzebue, AK, August 5, 2003.

Hon. LISA MURKOWSKI,
Senate Subcommittee on Public Lands and Forest, Dirksen Office Building, Washington, DC.

DEAR SENATOR MURKOWSKI: Maniilaq Association is an Alaska Native Regional Non-Profit Association, representing 12 federally recognized tribes of Northwest Alaska. Maniilaq, provides health cart, education, tribal, and social programs, including planning and development, which support sovereignty, governance, and maintenance of the 12 tribes.

On behalf of the tribes and it's service area, Maniilaq has compacted with the Bureau of Indian Affairs Realty Program to provide services within the Northwest Arctic Borough. Maniillaq strongly supports the view as presented in the letter of Edward Thomas, President of Central Council, Tlingit and Haida Indian, Tribes of Alaska on S. 1466, the Alaska Land Transfer Acceleration Act of 2003.

We urge the subcommittee to return the proposed legislation to DOI to conduct consultations with the Tribes in Alaska.

Sincerely,

HELEN A. BOLEN,
President/CEO.

ALASKA REALTY CONSORTIUM,
Anchorage, AK, August 6, 2003.

Hon. LISA MURKOWSKI,
Senate Subcommittee on Public Lands and Forest, Dirksen Office Building, Washington, DC.

Subject: Alaska Lands Transfer Acceleration Act of 2003

DEAR SENATOR MURKOWSKI: The Alaska Realty Consortium; is an organization formed by the Copper River Native Association,Aleutian/Pribilof Islands Association, Inc., and Chugachmiut Inc. representing and acting in the best interest of Native Allotment Owners, Applicants and Heirs of the Native Village of Cantwell, Copper Center, Gakona, Gulkana, Tazlina, Cordova, Nanawalek, Port Graham, Tatitlek Chendga Bay, Nelson Lagoon, St. George, St. Paul and Unga.

On behalf of the Tribes and the allotment owners in the above service areas, Alaska Realty, Consortium supports the testimony of Mr. Edward Thomas, President of the Central Council Tlingit and Haida, Indian Tribes of Alaska to be given to the United States Senate Committee on Energy and Natural Resources; Subcommittee on Public Lands and Forest Hearing on Senate Bill 1466 (Alaska Land Transfer Acceleration Act of 2003) on August 6, 2003.

Alaska Realty Consortium provides Realty Services and assist(s) all Native Allotment Landowner's named above and our trust responsibility is to ensure that each applicant receives title to their selection of an Allotment. Currently the Alaska Realty Consortium, serves 205 original allotee's and their Heir's with over 34 allotments that are pending/closed erroneously do to a legal defect.

The Alaska Realty Consortium has an obligation to it's member and will not stand aside on this particular issue without supporting the President of Central Council Tlingit and Haida Indian Tribes of Alaska. To do so would miss represent to best interest of the Native People within each of the Service Areas.

ABRAHAM SNYDER,
Realty Officer.

Juneau, AK, August 19, 2003.

Senator LISA MURKOWSKI,
Hart Senate Building, Washington DC.

DEAR SENATOR MURKOWSKI: I will take this opportunity to provide you with information regarding historical Tlingit use of the Berners Bay—Kensington Mine area.

I am a Tlingit, an Eagle—Kaagwaantaan, born and raised in Juneau. I am a professional geologist and registered environmental scientist formerly employed by the Environmental Protection Agency, the U.S. Geological Survey and the Alaska Department of Environmental Conservation. I also served for twenty years as a Council Member or as the President of the Juneau Tlingit and Haida. I recently stepped down as Chairman of the Board for Goldbelt, Incorporated.

I was raised in Juneau with my Grandfather Henry Cropley and my Grand Uncle Jake Cropley (both Raven Dog Salmon). Jake Cropley was the last traditional leader of the Auk People and he is referenced frequently in the Goldschmidt and Haas reports on Tlingit possessory rights and land uses. Jake Cropley's son, Ike Cropley, is my uncle and he is willing to confirm information described in this letter.

During my 27 years of environmental and cultural work in Southeast Alaska, I have interviewed numerous traditional Tlingit leaders in regards to the uses of the Berners Bay area. I also have my family's history, as taught to me, to draw upon.

I was given permission to speak about the traditional family uses and ownership of the Kensington Mine and Echo Cove areas by Judson and Austin Brown, both Klukwan Eagles—Dakl aweidi Clan. Judson Brown was a founding member of the Sealaska Heritage Foundation.

Judson and Austin Brown's Grandfather homesteaded the Comet Beach area under territorial law at the turn of the 20th century. He also marked and claimed the Sherman Creek Kensington Mine area according to traditional Tlingit law but granted the right for mining companies to work in the area.

According to the Brown men, the Comet Beach and Kensington Mine area was used for berry picking and trapping, primarily mink. Some goat meat was obtained from the area as well. Their Grandfather homesteaded the Comet Beach site in 1904 and many Tlingits, including their Grandfather and his family, worked at the mines and lived subsistence lifestyles right in the area while they worked. The resources were not negatively impacted by mining. The Browns also said they are not aware

of any real cultural/historical resource sites in the proposed mine area (Please note this is the proposed land exchange area).

My interviews with other Tlingit Elders confirm the Brown's descriptions.

In 1999 Austin Brown sent an open letter to numerous federal, state and Native organizations outlining his family's ownership and use of the Kensington Mine area and encouraged them to support the Coeur-Kensington Project. Mr. Brown's letter stated his belief that the employment would be good for Native People and the environmental/cultural resource aspects were well addressed. I can fax you a copy if you would like one.

My Grandfather and Grand Uncle, Henry and Jake Cropley, both worked for the mining industry in Juneau and Douglas and my Grandfather explored the Berners Bay area for gold as a mining company employee. When I was a young geologist, my Grandfather explained to me that the Kensington area uplands near Berners Bay were not culturally significant, the upland was not really used that much for other purposes and the subsistence would not be bothered by the mining.

The statements of the Brown family, other Tlingit Elders and my Grandfather and Grand Uncle all confirm each other. These are people who actively worked in and supported the mining industry in the Berners Bay area. They had a high regard for the land and would not have done anything contrary to traditional Tlingit culture, customs or practice.

I have also interviewed younger Tlingit or Non-native people in regards to burials and cultural sites in or near Berners Bay or Echo Cove. These claims or concerns invariably turned out to be without foundation, could not be verified with field investigations or were of far less significance than originally asserted.

To summarize, the Berners Bay area was used for commercial trading, mining and subsistence purposes by numerous Tlingit Clans and Groups. It was claimed by the Auk but shared with and used by many Tlingit Clans and Families.

The upland areas where the old mines such as the Kensington are located are claimed and recognized as the territory of the Chilkat and Chilkoot People (such as the Brown Family). These people lived near the mines in seasonal camps during the subsistence harvest seasons, and worked at the mines during the rest of the year. They were much more familiar with traditional practices and customs than we Natives of today and they welcomed and worked with the mining industry in the Berners Bay and upland areas. They would not have done so if it was culturally inappropriate.

During my tenure as Chairman, Goldbelt management sent in a letter of support for the original Sealaska-Cape Fox land exchange. I know that the supportive position of the Corporation has not changed. During that same period, as Chairman, I sent a letter on behalf of Goldbelt to Sealaska and Cape Fox expressing support for the land exchange and welcome to the traditional area of Goldbelt Shareholders. If you need additional details, please contact Gary Droubay Chief Executive Office of Goldbelt, Incorporated.

I hope this has been of some help to you.

Respectfully,

RANDY WANAMAKER.

KOTZEBUE IRA COUNCIL,
Kotzebue, AK, August 21, 2003.

Hon. LISA MURKOWSKI,
U.S. Senator, Senate Subcommittee on Public Lands and Forest, Dirksen Office Building, Washington, DC.

Subject: The Alaska Land Transfer Acceleration Act of 2003

DEAR SENATOR MURKOWSKI: The Native Village of Kotzebue, a Federally Recognized Tribal Organization, has a contract with the BIA to provide realty services for Native Allotment Owners, Applicants and their Heirs and also advocates for the protection of the rights of its members, does hereby respectfully request that you except this letter expressing our concerns over the proposed Bill S. 1466 entitled "The Alaska Land Transfer Acceleration Act of 2003". Although the stated goal of the Bill, to speed up the transfer of land to Native Corporations and the State of Alaska is admirable, the way it sets out to accomplish that goal, by eliminating the rights of individual Native Allotment applicants, is unconscionable and a violation of the trust responsibility that has been expressed by all three branches of the U.S. government.

As far back as 1787 in Article III of The Northwest Ordinance the U.S. government pledged that "the utmost good faith shall always be observed towards the Indi-

ans; their land and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded injustice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them". A quick review of history will show that the government seldom lived up to its promise, but even in more recent times the government has reaffirmed its position.

In *Seminole Nation v. United States*, 316 U.S. 286 (1942), in a decision written by Justice Frank Murphy, he stated "This Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people." He went on to say, "Under a humane and self-imposed policy which has found expression in many acts of Congress, and numerous decisions of this Court, it has charged itself with the moral obligation of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealing with the Indians should therefore be judged by the most exacting fiduciary standards." (316 U.S. 286 [1942] (296-297).

The executive branch weighed in on this topic as recently as November 20, 2000 when President William J. Clinton signed Executive Order 13175, which mandated, among other things, that government agencies must consult with affected tribes before submitting legislation to congress—that would affect said tribes. This directive was ignored by the Department of Interior in this case.

I believe your esteemed colleague Senator Daniel Inouye (HI), as vice-chairman of The Senate Committee on Indian Affairs, articulated the trust doctrine best: "Because the United States has assumed the trust responsibility for Indian lands and resources that arises out of the cession of millions of acres of Indian land to the United States, this trust responsibility is a shared responsibility. It extends not only to all agencies of the executive Branch of our Government, but also to the Congress. And so we must each do our part to assure that the Unites States' trust relationship with Indian Nations and Native Americans is generally honored" (U.S. Senate 1995, 3). The land ceded by Alaska Natives in particular has accounted for and continues to account for the majority of the wealth enjoyed by our great State, including the permanent fund, which was created by land taken from the Inupiaq people of the North Slope, not to mention numerous minerals, including gold, mined from lands ceded by native people across the entire state. All we ask for in return for this vast wealth and the hardship caused us by Americas insatiable appetite for oil and gold is that the individuals be given title to land that their ancestors have used for generations, a very small price indeed.

Please return the proposed legislation to the Department of Interior so that they may fulfill their obligation to consult the affected tribes. I also wish to convey my sincere hope that S. 1466 "The Alaska Land Transfer Acceleration Act of 2003" will be amended so that all pending native allotments will be legislatively approve. It is the right thing to do.

Sincerely,

IAN ERLICH,
Chairman.

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